

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case No.: 28-RC-286556

**POST-HEARING BRIEF ON BEHALF OF
STARBUCKS CORPORATION**

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I. INTRODUCTION.

Workers United (“Union”) seeks to represent all Baristas, Shift Supervisors, and Assistant Store Managers (“ASMs”) at a Starbucks Corporation (“Starbucks” or “Company”)-owned store located at Power and Baseline Roads in Mesa, Arizona (the “Power and Baseline” store). Starbucks contends that the smallest appropriate unit including the Power and Baseline store must also include the other thirteen stores in Starbucks’ District 380. Starbucks proceeded to a hearing before the Region to protect the rights of all non-supervisory hourly partners working in District 380 to vote on the question of union representation.

Although the single-store presumption is applicable to this case, the evidence presented by Starbucks during the three-day hearing between December 10 and 14, 2021, when analyzed in light of well-established National Labor Relations Board (“Board” or “NLRB”) case law, proves that the presumption has been rebutted because the Power and Baseline store does *not* maintain the local autonomy, control, or authority sufficient to sustain a presumptive single-store unit. All of the District 380 stores are highly integrated and follow exacting operational protocols to ensure each of the fourteen stores has the same “feel,” is similarly merchandized, uses the same customer flow, sells the same food and beverages, and overall provides the same consistent Starbucks experience customers both expect and deserve. To ensure consistent service, Starbucks employs a dedicated team of partners who are hired with the expectation that they will work in multiple stores throughout the district. All District 380 partners are similarly trained, perform the same roles and duties, and enjoy the exact same terms and conditions of employment. Partners are able to work in any District 380 store on any given day and, without additional store-specific training, seamlessly provide the same great customer service. By design, not happenstance, 45% of Baristas and Shift Supervisors worked in multiple District 380 stores in fiscal year 2021, and 58% of

partners working in the Power and Baseline store were “borrowed” from other stores. District 380 partners are indeed one team and view themselves as one team.

Because District 380 operates as one functionally integrated unit with high levels of employee interchange, and common wages, benefits and employment terms for partners throughout the district, a single-store unit is not conducive to stable labor relations. Moreover, any decision finding a single-store unit appropriate would be improperly controlled by the extent of the Union’s organizing in violation of Section 9(c)(5) of the National Labor Relations Act (“Act”) since the facts, the law and the practicalities of the labor relations situation in District 380 mandate a single, district-wide unit.

Respectfully, the Region must not reward Workers United for using the NLRB’s process to effectively gerrymander voters. The Section 7 rights of all District 380 partners must be protected by permitting them to vote together in one District 380-wide election.

II. BACKGROUND FACTS AND PROCEDURAL HISTORY.

Starbucks operates over 9,000 retail locations across the United States to connect communities, one cup of coffee at a time. The Company’s North America retail operations are organized into twelve retail regions. (B I Tr. 110; M Tr. 25).¹ District 380 is part of Starbucks’ Region 140 and Starbucks’ Western Mountain Region. (M Tr. 26, 117). Regional Vice President Andrea Streedain oversees the Western Mountain Region, and therefore has responsibility for both District 380 and the Power and Baseline store (also known as Store 5610). (M Tr. 25, 26). During relevant times, Regional Director Eric Brouhard oversaw Region 140 and reported to Streedain.

¹ The Region has taken administrative notice of the transcripts from the R case hearings in 03-RC-282127, et al (Buffalo I), and 03-RC-285929, et al (Buffalo II). (M Tr. 8-9).

References to the Buffalo I transcripts are (B I Tr. ____). References to the Buffalo II transcripts are (B II Tr. ____). Exhibits presented in the Buffalo I hearing are referred to as (____ Ex. XX). Exhibits presented in the Buffalo II hearing are referred to as (____ Ex. 1XX). Exhibits presented in this hearing are referred to as (____ Ex. 2XX).

(M Tr. 26). Tricia Lowder is the District 380 District Manager, and she ultimately reports to Streedain as well. (M Tr. 26, 27). Lowder is focused on operations, execution and talent planning in District 380 with oversight from Streedain. (M Tr. 27-30).

District 380 consists of fourteen total stores, thirteen of which are drive-thrus, and one of which is a café. (M Tr. 30, 87). The Power and Baseline store at issue in this case, like the majority of District 380's stores, is a drive-thru. (M Tr. 108). All stores at issue in District 380 are owned and operated by Starbucks. (M Tr. 117).

As set forth below, individual stores in District 380 do not have sufficient local control over their operations or labor relations to justify a single-store unit. All District 380 stores operate according to heavily detailed operational plans, devised at the national level, which include details as minute as to the exact location of a cake pop in a food display. These details are what ensure that all customers receive the same Starbucks customer experience of products and service, regardless of the store they frequent in District 380. Store operations are further driven by Starbucks' heavy reliance on technology that forecasts customer demand across District 380, and schedules partners to work based on the forecasted demands and partners' availability. All District 380 stores share the same consistent décor and receive the same products and supplies from the same vendors via the same supply logistics network. By design, all District 380 stores operate according to the exact same protocols without variance. The Power and Baseline Store Managers² do not have any ability to deviate from these policies and procedures.

Further by design, all the partners who work across the District 380 stores share the same exact terms and conditions of employment regardless of the store in which they may work on any given day. The record is devoid of a single example of any difference in the terms and conditions

² There are currently two Store Managers covering the Power and Baseline store. (M Tr. 103-104).

of employment amongst any District 380 partners. Starbucks designed its operations to enable its partners (most of whom are part-time) to work in any store, at any time, to meet its operational needs. In fact, for that reason, Starbucks hires its partners with the express understanding that they may work in any District 380 store. Because the District 380 stores operate under the same protocols and all partners district-wide share the same exact terms and conditions of employment, there is extensive partner interchange and partner contact across the entire district.

Finally, although the Regional Director has recognized that the unit issues in this case are similar to those in the Buffalo cases being handled by Region 3, and although Starbucks has deployed national policies and technology tools to standardize operations across the United States, there are critical differences in how the Buffalo Market is managed versus how District 380 is managed, and also with respect to employee interchange. These differences are driven, at least in part, by the discretion of the District Managers in how they approach the particular facts and circumstances arising in their districts – sometimes referred to by Starbucks as the “District Manager Approach”. These differences reflect not only Starbucks’ centralized management of stores at the market or district-level, but also require the Region to independently analyze the facts and circumstances of this case.

Accordingly, Starbucks believes that the Union seeks an inappropriate single-store unit, and that the only appropriate unit is one covering all Baristas and Shift Supervisors working across District 380, defined as follows:

Included: All full-time and regular part-time hourly baristas and shift supervisors, employed at the Employer’s facilities located in Starbucks Corporation’s District 380 in Arizona.

Excluded: All store managers, assistant store managers, office clerical employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

Further, because the evidence establishes that Starbucks employs a large number of irregular, part-time partners in District 380, and 58% of all partners who work in the Power and Baseline store are partners from other stores, any employee who has worked at least four hours per week in the calendar quarter preceding the eligibility date should be eligible to vote. *Davison-Paxon*, 185 NLRB 21, 24 (1970).

The Region conducted a hearing regarding the unit scope on December 10, 13 and 14, 2021. Both Starbucks and the Union called numerous witnesses and introduced exhibits during the hearing.³

III. THE ONLY APPROPRIATE UNIT IS ONE COMPRISED OF ALL STORES IN DISTRICT 380.

The totality of the evidence before the Region rebuts the single-store presumption and requires the conclusion that the only appropriate unit is one that consists of all Baristas and Shift Supervisors working in District 380. Under current Board law, a single-store bargaining unit is presumed to be appropriate in the retail chain setting. In order to rebut that presumption, a party must negate the separate identity of the single-facility unit. *Red Lobster*, 300 NLRB 908, 910 (1990). To determine whether the single-facility presumption has been rebutted, the Board analyzes the following community of interest factors: (1) the extent of central control over daily operations and labor relations, including the extent of local autonomy; (2) the functional coordination in operations between locations; (3) the similarity of partner skills, functions, training and working conditions; (4) the extent of common wages, benefits and other terms and conditions of employment; (5) the degree of partner interchange; (6) the geographic proximity between

³ The Union's inclusion of ASMs in the unit was not an issue set for hearing. Starbucks contends that the ASMs employed in District 380 stores are Section 2(11) supervisors. This issue was deferred for resolution after the election. (M Tr. 13).

locations; and (7) the parties' bargaining history, if any exists. *See Trane, Inc.*, 339 NLRB 866, 867 (2003); *McDonald's, Inc.* 192 NLRB 878, 880 (1971); *see also Foodland of Ravenswood*, 323 NLRB 665, 666 (1997); *Red Lobster*, 300 NLRB at 910.

As set forth below, the evidence proves that the single-store presumption has been rebutted in this case by establishing that: (1) Starbucks centrally controls the daily operations and labor relations of the District 380 stores such that individual stores and store managers have little or no autonomy; (2) there is extensive functional coordination in operations between District 380 locations; (3) partner skills, functions, training and working conditions are nearly identical across the market and are primarily controlled by centrally promulgated policies and procedures; (4) common wages, benefits and other terms and conditions of employment are the same across District 380; (5) there is a high degree of partner interchange across the district; (6) District 380 stores are geographically proximate to one another; and (7) although the parties have no formal bargaining history, there is a uniformity of partner interests throughout the market.

A. Starbucks Controls the Daily Operations of All District 380 Stores at the District Level or Higher.

A single-location unit is not appropriate because individual stores in District 380 lack sufficient control over daily operations or labor relations; rather, such control primarily lies at the district level or above and applies to all stores in District 380. *See, e.g., Budget Rent A Car Systems*, 337 NLRB 884, 885 (2002); *Super X Drugs of Ill., Inc.*, 233 NLRB 1114, 1114-15 (1977); *Kirlin's Inc. of Cent. Illinois*, 227 NLRB 1220-21 (1977). Facts supportive of a multi-location unit include evidence that decisions such as store layout, products, pricing, merchandising, purchasing, daily operations, and scheduling, are made on a multi-store basis rather than a single-store basis. *See, e.g., Super X Drugs*, 233 NLRB at 1114. Further demonstrating the lack of local autonomy vested in Store Managers, the evidence shows that ASMs and Shift Supervisors, who are included in the

petitioned-for bargaining unit, share many of the duties on which the Union relies to establish local autonomy. Thus, such duties cannot serve as evidence of discretionary local autonomy since they are performed by partners the Union contends are not supervisors within the meaning of the Act.

Here, the evidence proves that Starbucks controls the operations and labor relations of the Power and Baseline store and all other District 380 stores at the District Manager-level or above. Store Managers have very narrowly limited control over operational or labor decisions, and even the bulk of that control is shared with Assistant Store Managers and Shift Supervisors, militating against a single-store bargaining unit.

1. Operational Decisions are Controlled at the District Level and Above.

The evidence demonstrates that store planning, design, layout, maintenance, supplies, merchandising and promotions are all controlled by policies and procedures applicable to all stores in District 380. Individual Store Managers have no control over these operational issues.

a. Store Planning, Design, Layout and Maintenance are Centrally Controlled at the District Level and Above.

All decisions about whether and where to build new Starbucks stores, and whether to close, remodel, or relocate current stores, are made at the district level and above. (B I Tr. 53-56, 63, 185; M Tr. 86-87; 132). Decisions to open or close stores within the District are made through collaboration between Starbucks' corporate operations team, the store development team, the real estate team, and the market planning team with input from Regional Vice President Streedain and Regional Director Brouhard. (M Tr. 123, 125-128, 132).

Starbucks has a strategic plan covering District 380, which is a high-growth area. (M Tr. 27, 118). Starbucks also has centrally determined guidelines for the ratio of stores to people in a particular area—it plans for density of 10,000 people to one store. (M Tr. 119).

Brouhard prioritizes the stores to be opened or closed and Streedain, together with the

corporate design and construction team, is the final decision maker. (M Tr. 88). Karen Gleason Parrott, the Store Development Director for District 380, testified that it is her decision about whether to relocate stores, and she decided to relocate the Power and Baseline store to its current location in 2015. (M Tr. 117-118, 123-125). Starbucks has centrally developed a prototype store design that represents the Starbucks' brand and includes specific equipment and other layouts to drive store efficiencies. (M Tr. 125). Starbucks' centrally determined design and layout requirements are only modified to meet landlord requirements. (M Tr. 125). Store Managers do not have any input into store location, design, construction, size, layout, décor, equipment, or whether or when a store will be remodeled. (M Tr. 87-88, 95-97, 132, 161).

If a store needs a piece of equipment or repairs, a Shift Supervisor, ASM, or Store Manager submits a digital work ticket to an electronic system applicable to all stores in District 380, which is then taken up by Starbucks' facilities management team. (M Tr. 86-87). Starbucks' facilities team locates and schedules the vendors and handles vendor payments. (*Id.*). The local store has no discretion as to when or how the ticket is resolved. (*Id.*).

Relatedly, permanent store closure decisions are made by a committee composed of high-level representatives involving Parrott, Streedain, and the store development, finance, market planning, and legal teams. (B I Tr. 182; M Tr. 114, 132). Again, individual Store Managers play no role in the decision as to whether their store will remain open or be closed. (B I Tr. 181-183; M Tr. 132).

b. Supplies, Merchandising, and Promotions are Centrally Controlled at the District Level or Above.

Starbucks creates and implements detailed operational protocols to ensure customers receive the same Starbucks experience regardless of the store they visit on any given day. Customer flow, product selection, and services are highly orchestrated within the District 380 stores. Simply

put, as consumers we all know that we will receive the same great beverages, food, and experience no matter which Starbucks we enter – that is a product of extensive, centralized design and control over store operations.

All District 380 stores utilize the same products and supplies. Decisions as to what products will be sold and what supplies will be utilized in District 380 stores are made by Starbucks' centralized supply chain and product teams. (B I Tr. 70; M Tr. 58, 84-85, 108). Menus are set outside of the stores and are consistent across all District 380 stores. (B I Tr. 82-83; M Tr. 56-59). Again, Store Managers have no role in this process; they do not determine what products will be sold at their assigned stores, and they cannot vary from Starbucks' pre-determined product offerings. (B I Tr. 70-71, 82-83; M Tr. 56-59).

Store promotions also are determined on a centralized basis, and Store Managers cannot decide to opt out of promotions or hold their own promotions. (M Tr. 156). Every twelve to thirteen weeks, Starbucks headquarters issues a planning period guide nationally and to all District 380 stores. (B I Tr. 351; M Tr. 56-59). The planning guide includes in-depth discussions of the promotional items to be showcased during the planning period, special food or drink items to be offered at all stores, as well as instructions on how to implement the new promotional items. (B I Tr. 351). Just as in the Buffalo Market, all District 380 stores receive the same planning guide at the same time, and all District 380 store partners are required to adhere to the planning guide's directives on how to prepare seasonal food and beverage items and display such items. (B I Tr. 351-352; M Tr. 56-59). Store signage is centrally produced by Starbucks' creative studio. (M Tr. 156-157). Individual stores and Store Managers execute the prescribed plans, and the District Manager is directly involved in such launches. (M Tr. 406-407 (Harrison)). Store Managers do not have the authority or autonomy to deviate from the planning guide procedures, they may not

decline to participate in “promo” periods, and they have no control over the products and merchandise offered by the store during these periods. (B I Tr. 351; M Tr. 56-59).

Like Buffalo, Starbucks’ extensive centralized operational control drills down to the details of which coffees will be brewed in its District 380 stores each week, how food will be displayed, and how food and beverage items are presented. (B I Tr. 86; M Tr. 56-59, 158-159). In fact, Starbucks headquarters regularly distributes a “Siren’s Eye” to each store. (B I Tr. 295-296; M Tr. 57, 158-159; Er. Exs. 21, 207). Similar to the directives in the planning period guide, the Siren’s Eye tool identifies and dictates exactly how and where each store displays its merchandise. (B I Tr. 295-296; M Tr. 57-59, 158). Each Siren’s Eye has an effective date determined by Starbucks headquarters, and the document includes visual layouts providing direction on where bottles of water are placed, how many cake pops are displayed in the food case and where they are placed, and the temperature at which merchandise should be maintained. (B I Tr. 101-102, 356, 358-359, 295-296; M Tr. 56-59, 158-159; Er. Exs. 21, 207). All District 380 partners receive and implement the Siren’s Eye at the same time. (M Tr. 57). Store Managers do not participate in the creation of the Siren’s Eye and cannot vary from the operational guidelines set forth in the Siren’s Eye. (B I Tr. 80, 83; M Tr. 56-59, 159). The role of the store is to execute on the carefully designed plans so customers have a consistent experience in whichever store they visit.

Relatedly, individual Store Managers have little or no discretion or input on product or supply pricing, procurement, invoicing, or purchasing. (B I Tr. 70-71, 350-351; M Tr. 56-59, 153). Pricing is handled by the “pricing team” at the market, regional or national level, not at the store level. (B I Tr. 350-351; M Tr. 59). All procurement, invoicing, and payment of food and beverage items are processed by the Starbucks supply chain team on a district-wide basis. (B I Tr. 70-71; M Tr. 84-85). Product and supply orders for all stores in District 380 are placed on a district-wide

basis. (B I Tr. 70-71; M Tr. 84-85). In fact, the District 380 stores purchase the same products from the same vendors, the products are shipped from the same warehouse utilizing the same delivery trucks, and the invoicing for products and supplies is handled by the same centralized resource. (M Tr. 84-85, 153-155; *see also* B I Tr. 65-66, 70-73, 75). Store Managers cannot order products beyond those specified by Starbucks, cannot exceed limits on certain products, cannot change distribution centers for their stores, do not plan delivery routes, and do not determine product pricing. (M Tr. 153-156).

Starbucks also uses engineering tools to automatically replenish all packaged food, packaged coffee, merchandise, and gift cards for District 380. (M Tr. 84-85, 151-153; B I Tr. 346). New inventory arrives without any orders or requests from individual stores, and Store Managers *cannot* adjust their orders for certain products. (M Tr. 84-85; B I Tr. 346-347). The Company also has an auto-shipment process for select food and beverage items, and it has plans to make beverage and paper product orders automated as well. (M Tr. 84-85, 153; B I Tr. 346-347). Thus, new and seasonal items are automatically shipped to each store without any interaction from the store manager. (M Tr. 84-85; B I Tr. 346-347).

For those products not covered by automated shipment, all stores use the same inventory management system (“IMS”) that automatically suggests order quantities based on order history. (M Tr. 84-85, 150; B I Tr. 74, 345-346). This “par builder” determines each store’s appropriate order and inventory needs based on sales history, forecast, and trend data. (B I Tr. 345-346; M Tr. 84-85, 108, 150). There are also “suggested order quantities,” or SOQs for each store, which are designed to minimize the need for human input in inventory orders. (M Tr. 151-153; B I Tr. 346). If the inventory is accurate, and the counts are right, then the IMS works with very little input from store-level management. (M Tr. 152; B I Tr. 346). Although Store Managers, ASMs and Shift

Supervisors have some ability to make changes in the IMS, any changes can be made only within parameters centrally established by Starbucks. (M Tr. 153; B I Tr. 123-124). Starbucks seeks to limit the input local stores can make into the system because inventory quantities are determined based on previous trends, product mix, sales forecasts and other factors. (M Tr. 152; B I Tr. 346-347). The limitations on local stores' ability to modify ordering are intended to ensure sufficient inventory of supplies exists for other stores to meet customer demand throughout District 380, not just at an individual store, and thus Starbucks reduces waste. Moreover, the fact that Store Managers as well as ASMs and Shift Supervisors can modify orders demonstrates the lack of discretionary local autonomy in this area since this is a task performed by assertedly non-supervisory employees.

2. Labor Relations Decisions are Controlled at the District Level and Above, Not at the Individual Store Level.

Labor relations also are centrally controlled at the District 380 level or above through the regular and substantial interaction of the District Manager with each of the stores, and Starbucks' nationally deployed policies and technology tools. Specifically, the District 380 District Manager frequently communicates with the stores and often is in the stores weekly. (M Tr. 54-55). She has weekly meetings with all of the District 380 Store Managers, she holds bi-monthly hiring and staffing meetings with all of the Store Managers in her district, and she holds promotional planning meetings with all of the Store Managers in her district. (M Tr. 54-55, 103). As the evidence discussed below demonstrates, virtually every major decision with respect to labor relations is handled at the District Manager level and above.

a. Staffing Needs are Determined on a District-Wide Basis Utilizing the Partner Planning and Partner Hours Tools.

The staffing needs of all stores within District 380 are centrally determined at the District Manager level and above. (M Tr. 4-35, 43-44, 94-95, 149). The District 380 District Manager

reviews the staffing and labor hours for each store in the district weekly through information generated by the Partner Hours tool. (M Tr. 43-44, 94-95 149). The Partner Hours tool and the Partner Planning tool work hand-in-hand to forecast customer demand across District 380 on a per store basis, determine the number of partners to be scheduled in a particular store in the district, and determine a forward-looking forecast of how many partners may need to be hired. (Er. Exs. 4, 205; B I Tr. 218; M Tr. 94-95, 149-150, 245-246). Only the District Manager has access to the information generated by the Partner Planning tool; Store Managers do not have access to this information unless granted by the District Manager. (M Tr. 94).

b. Applications and Hiring are Handled on a District-Wide Basis.

Starbucks obtains and processes employment applications on a centralized basis. Applicants for Barista and Shift Supervisor positions are received through Starbucks' career website. (B I Tr. 224-234, 245-257; M Tr. 64, 248). All applicants complete the same job application on Starbucks' website and answer the same pre-screen questions. (B I Tr. 224-234, 256-257; M Tr. 63-65, 248-249; Er. Exs. 8-9). Once the applicant passes the pre-screening process, his or her information is entered, centrally stored and remains active in Starbucks' hiring platform called Taleo. (B I Tr. 233-234, 236-238; M Tr. 63-64). A recruiter assigned to District 380 assists with inputting information into Taleo, reviewing the answers to the pre-screen questions, and scheduling interviews. (M Tr. 68-69, 117-118). The applicant information contained in Taleo is visible to all Store Managers in District 380 because hiring is handled on a district-wide basis rather than a store-by-store basis. (M Tr. 166).

In District 380, Starbucks holds bi-monthly hiring fairs; the structure of these fairs is specific to District 380, and they are organized by the District Manager. (M Tr. 63-66, 246). These hiring fairs are the primary way that hiring is currently handled in District 380. (M Tr. 247, 250, 262). Applicants contained in the Taleo database are invited to the hiring fares where multiple

Store Managers and/or the District Manager conduct interviews of each candidate according to a pre-established script of questions. (M Tr. 63-66, 250, 251, 263).⁴ Ultimately, following this district-wide job fair and collective interviewing process which allows the District Manager to have input, Store Managers make the final hiring decisions for baristas. (Tr. 43, 66). Critically, however, the District Manager makes the hiring decisions for Shift Supervisors and Store Managers, and the District 380 District Manager works “shoulder-to-shoulder with all her store managers during the hiring process.” (M Tr. 43, 66, 262). After an offer is extended, Starbucks personnel outside of District 380 process a background check. A candidate who passes the pre-screening assessment and is offered employment (contingent upon background check), still may not become a partner if the background check does not clear. (B I Tr. 241).

The Union’s witnesses testified that they had seen prior Store Managers in the Power and Baseline store interview candidates in the store lobby, and one Union witness engaged in a discussion about the candidate after the interview. They also testified that if someone walked into the store and handed them a resume, they should give the resume to the Store Manager. But the Union’s witnesses also admitted that they do not have personal knowledge about whether the candidate would have interviewed with other Store Managers, because “if it didn’t happen in my store, I wouldn’t see it.” (M. Tr. 309 (Alanna)). This obviously would also be true of the hiring fairs as well—if they did not occur at the Power and Baseline store (which they did not), the Union witnesses would have no personal knowledge about them.

Union witnesses also testified that they did not know if the Store Manager contacted a District Manager prior to making a hire. (M. Tr. 349 (Hejduk)). Further, much of the testimony

⁴ Hiring through the pre-scheduled hiring fairs is the expectation in District 380. While Store Managers are permitted to hire applicants outside of this process, all applicants are interviewed by two Store Managers and/or an ASM or District Manager before they are hired. (M Tr. 248, 265). There is no evidence that a Store Manager has the ability or authority to hire an applicant on their own.

regarding the Power and Baseline Store Managers conducting interviews and hiring employees involved former Store Managers rather than relating to the hiring process as it currently exists. *See Dattco, Inc.*, 338 NLRB No. 7, slip op. at 2 (2002) (finding single facility unit inappropriate in light of “highly centralized control” over employees at a single bus terminal notwithstanding previous finding that a high degree of local autonomy existed at employer’s other bus terminals); *Frito-Lay, Inc.*, 202 NLRB 1011, 1012-13 (1973) (finding petitioned-for unit inappropriate as single location lacked local autonomy in light of reorganization undertaken by employer). In fact, former Store Manager Harrison confirmed that employees must apply through Starbucks Taleo system, and that recruiters could have a role in hiring that she was not aware of. (M Tr. 422). Such evidence lacking in personal knowledge and based on prior rather than current procedures should be given no weight and is not sufficient to rebut Starbucks’ evidence describing the current hiring practices on a district-wide basis.

c. Promotions are Controlled on a District-Wide Basis.

With respect to promotions, the evidence is clear that the District 380 District Manager makes the decision to promote a Barista to Shift Supervisor. (M Tr. 67, 289). The District Manager and the Regional Director make the decision to promote a Shift Supervisor to ASM. (M Tr. 67; *see also* M Tr. 314). To be promoted from ASM to Store Manager, the candidate must be interviewed by a panel of District Managers, and the panel collectively makes a promotion recommendation. (M Tr. 67). The District Manager is involved in the performance evaluation process through quarterly check-ins. (M Tr. 84). Moreover, the District 380 District Manager has implemented a mentorship program that allows Shift Supervisors and Baristas to come together with Store Managers throughout the district for mentoring, which further highlights the district-wide nature of the development and evaluation process. (M Tr. 65, 66, 67-68).

In fact, the evidence reveals that Starbucks implemented a Career Progression process in

early 2021 whereby partners interested in promotion must apply for available positions through Taleo, and the progression process is centralized at the district level or above. (B II Tr. 57-58). Pursuant to the Career Progression process, Store Managers are not involved in job promotions for Baristas and Shift Supervisors. (B II Tr. 57). Rather, partners apply for available promotion positions through Taleo. (B II Tr. 57-58). Recruiters and interviewers then conduct a pre-screening process and interviews, and they make the decision to promote or not promote someone into a new position, unless the promotion is into an ASM or Store Manager position, in which case the District Manager makes the promotion decision. *Id.*

This process is consistent with Shift Supervisor Alanna's testimony that she decided to apply for a Shift Supervisor position once such a position became open in her store. (M Tr. 289-290). She further testified that the District Manager, not the Store Manager, approves promotions from Barista to Shift Supervisor. (M Tr. 314). Hejduk testified that the Store Manager promoted her from Barista to Shift Supervisor. (M Tr. 336, 348, 352). This testimony obviously conflicts with Alanna's testimony. Hejduk further testified that she does not have knowledge of every conversation a Store Manager has with a District Manager, including no knowledge about conversations regarding promotion. (M Tr. 348, 352). Similarly, although former Store Manager Harrison testified that she was involved in Barista to Shift Supervisor assessments at stores outside of District 380, she sometimes involved other Store Managers in those assessments, and she was not personally involved in any promotions from Barista to Shift Supervisor or otherwise during her time at Power and Baseline. (Tr. 378, 433). Accordingly, this conflicting testimony should be given no weight, especially to the extent it does not reflect Starbuck's current practices. *See Dattco, Inc.*, 338 NLRB No. 7, slip op. at 2; *Frito-Lay, Inc.*, 202 NLRB at 1012-13.

Finally, in the event a partner leaves Starbucks and wants to be rehired, the District

Manager must approve the rehire. (M Tr. 68). This practice also is specific to District 380. (M Tr. 68).

d. Hours of Work and Schedules Are Determined on a District-Wide Basis, and Partners Cover Shifts in Multiple Stores.

Store hours for each store in District 380 are set by the District Manager in partnership with the Regional Director. (M Tr. 49, 146). Store Managers do not have the ability to set or change hours or to close stores; all such decisions must be approved by the District Manager. (M Tr. 49-50, 146, 165).

Schedules are generated using the Partner Planning and Partner Hours tools. When partners are hired in the District, they enter their availability to work on a form entitled the Partner Availability Form. (M Tr. 34-35; Er. Exs. 3, 201). Notably, the Partner Availability Form seeks partners' availability for hours in which they may be scheduled to work but does not seek partners' limitations as to the stores in which they are willing to work. (Er. Exs. 3, 201). Rather, the expectation is that every partner is available to work in his or her home store and any other stores in the District. (M Tr. 34-36). The Partner Availability Form clearly sets forth the expectation that partners will work anywhere when needed: "[y]ou could also be asked to work at another location to meet the needs of the business or to attain your requested hours." (Er. Ex. 201).

Once the partner completes the Partner Availability Form, the information is inputted into the centralized Partner Hours database. (B I Tr. 214-215; M Tr. 34). Once the Partner Planning tool marries its forecasting information with the partners' availability data from Partner Hours, the system automatically generates store schedules for each District 380 store. (M Tr. 34-35; B I Tr. 218-219, 260). Thus, the schedules for all District 380 stores are automatically generated in the first instance by technology, not by Store Managers.

Schedules are posted weekly, three-weeks in advance. (M Tr. 38). Overtime must be

approved by the District Manager; it cannot be approved by Store Managers. (M Tr. 36). If all of the automatically generated shifts in a store cannot be covered due to call-offs or other reasons, both the Store Manager and the District Manager look for partners to cover the shifts, both from within the home store involved and from other stores in the District. (M Tr. 36, 39). This practice is so common throughout Starbucks that, Streedain testified that when she was a Store Manager she reached out to her District Manager for assistance in finding coverage, and when she was a District Manager, she found coverage for Store Managers who needed assistance. (M Tr. 108-109).

Relatedly, if a partner wants more hours than are being provided through the scheduling at his or her home store, s/he looks for hours in other stores. (M Tr. 36-38). Partners routinely work hours in stores other than their home stores as evidenced by the interchange data discussed below. (M Tr. 37-38). Partners have visibility into the schedules of all the District 380 stores, and they can either be assigned to shifts at stores other than their home store, or volunteer for such shifts. (M Tr. 38-39). Partners can swap shifts with other partners either in or outside of their home stores so long as they find coverage for those shifts. (M Tr. 38-39). And to find such coverage, partners commonly call another store, text each other and use a District 380 group chat to communicate with one another. (M Tr. 39). Starbucks also assigns partners to stores other than their home store; indeed, Streedain testified that an ASM was assigned to Power and Baseline, which was not his/her home store the week immediately prior to the hearing in this matter. (M Tr. 98). Once a partner is scheduled for a shift, regardless of whether it is a home store shift or a shift in another store, and regardless of whether the partner is working it by assignment or choice, it becomes an assigned shift and they simply cannot choose not to work it. (M Tr. 101). They will be disciplined for failing to do so. (M Tr. 40-41, 101).

In addition, Starbucks' scheduling tools specifically schedule Store Managers for "non-coverage" hours in which they are not performing customer-facing duties. (M Tr. 62, 145, 163). District 380 Store Managers are expected to spend about 25% of their time doing customer-facing activities side-by-side with Baristas and Shift Supervisors, and failure to do so could lead to disciplinary action by the District Manager. (M Tr. 62-63). Store Managers do not decide what their non-coverage hours will be, or how many hours they will spend in non-coverage duties. (M Tr. 146). Moreover, during the hours that a store is open, and no Store Manager is present, the ASM or the Shift Supervisors present in the store, both categories of which are included in the petitioned-for unit, are responsible for the store. (M Tr. 146-147). The fact that petitioned-for partners are responsible for the store during the considerable number of hours that a Store Manager is not present is further evidence that individual stores do not operate with sufficient autonomy to sustain a single-store unit.

The Union's witnesses testified that store managers were responsible for scheduling because they had seen store managers "working on schedules" in the lobby of the store, but admitted that this work was limited to switching people on the schedule to cover empty shifts or accommodate time-off requests. (M. Tr. 291 (Alanna), 337 (Hejduk), 383 (Harrison)). Determining such shift coverage, however, is not evidence of local store autonomy because there is no discretion involved—all partners have already designated their available work times, and the schedule identifying the shifts that need to be covered was generated by the Partner Planning tool. (E.g. M Tr. 379 (Harrison)). Union witnesses also testified that Store Managers were responsible for approving time off based on how the schedule was working, but they admitted that partners attempt to cover their shifts themselves by contacting other partners, and that they make time-off requests through Starbucks' technology tools. (M Tr. 291, 299, 315 (Alanna), 340 (Hejduk)).

They further testified that they did not know whether schedules had to be approved by the District Manager before they are finalized. (M. Tr. 315 (Alanna), 348 (Hejduk)). Such speculative testimony that is not based on personal knowledge should be given no weight.

e. Personnel Policies are Centrally Promulgated and Applicable to all Partners in the District.

Starbucks' heavily centralized control carries through its personnel policies. All partners in District 380 are subject to the same personnel policies, as crafted by a human resources team in Seattle. (M Tr. 90-92; B I Tr. 277, 389). The Partner Guide is given to all partners in District 380 (and throughout the country) when they begin work, and it contains all employee policies and procedures. (M Tr. 91-92; Er. Ex. 13).

Likewise, the Operations Manual was developed centrally at the corporate level and contains policies and procedures applicable to all U.S. partners. (M Tr. 90-91). The Operation Excellence Field Guide, which was also developed at the corporate level, applies in all of the stores Streedain supervises and describes all of the field roles, routines, and resources needed for store operations, outlines the roles and responsibilities for all positions within a store all the way to the Regional Director level, identifies the tools and resources each position should leverage, and how the various positions work together to accomplish the goal of delivering a consistent customer and partner experience. (M. Tr. 90-91). All partners have access to the same Partner Contact Center for human resources information and support regardless of the store in which they work. (M Tr. 91; B I Tr. 389). Furthermore, although policies are crafted at the national level, Starbucks employs a Partner Relations Manager responsible for Arizona stores, Keira Bailey, to interface with hourly partners regarding application of these policies. (M Tr. 240).

f. Partner Work Assignments are Centrally Determined by the Play Builder Tool, and Store Managers Have No Meaningful Discretion Over Such Assignments.

The stations to which a partner is assigned during a shift are decided by an engineering tool called the “Play Builder,” which was developed by Starbucks’ Services Team. (M Tr. 89-90, 92; B I Tr. 354; Er. Ex. 16). The Play Builder, which is used in all stores in the U.S., utilizes data to make projections of the daily store work flow, the product mix, the number of partners scheduled to work, and makes recommendations for where partners should be placed in the line layout and what tasks they should be asked to complete. (M Tr. 89-90, 92, 327-328 (Alanna); B I Tr. 91, 354; Er. Ex. 204). Indeed, former Store Manager Harrison testified that Store Managers are required to use Play Builder, and Shift Supervisor Alanna testified that she uses Play Builder to understand where to assign partners if there are more or fewer partners working on her shift than usual. (M Tr. 327-328 (Alanna), 380 (Harrison)). Notably, the Union’s witnesses, including Former Store Manager Harrison, testified that the Shift Supervisor regularly acts as the Play Caller, directing the Store Manager’s work area consistent with the Play Builder. (M Tr. 421 (Harrison); *see also* M. Tr. 90).

Moreover, although there is evidence that Shift Supervisors sometimes deviate from the Play Builder-generated plays, the evidence also demonstrates that they do so solely based on their knowledge of which employees are good at what roles and their experience as a Shift Supervisor. (M Tr. 292-93 (Alanna), 338-39 (Hejduk), 384 (Harrison)). Once again, NLRB precedent makes clear that this is not the exercise of supervisory authority. *CNN America, Inc.*, 361 NLRB 439, 460 (2014); *WSI Savannah River Site*, 363 NLRB No. 113, at 3 (2016); *see also Byers Engineering Corp.*, 324 NLRB 740, 741 (1997) (the issuance of instructions and minor orders based on greater job skills does not amount to supervisory authority); *Providence Hospital*, 320 NLRB 717, 727, 729-730 (1996) (routine assignment or direction to perform discrete tasks based on experience,

skills, and training constitutes insufficient indicia of supervisory authority). And the fact that petitioned-for Shift Supervisors and Assistant Managers make such assignments further demonstrates that the assignments are not evidence of local autonomy sufficient to avoid rebuttal of the single-store presumption.

g. Disciplinary Matters are Centrally Determined and Store Managers Have No Discretion to Alter Them.

Further evidence of centralized control is the implementation of partner discipline. Starbucks utilizes yet another technology tool, Virtual Coach, to ensure that discipline is consistently administered across its stores. Virtual Coach was designed to address the high frequency of partners working in multiple stores. Starbucks wanted to ensure that each partner is managed in the same way and subject to the same disciplinary policies and procedures regardless of the stores in which such partner may work. (B I Tr. 280; M Tr. 254). Virtual Coach “creates consistency due to the amount of partners that we have working across stores. And this creates consistency, so that each manager is managing each partner the same when there are violations in policy or behavioral issues that don't meet our standards - or behavioral gaps, I should say.” (B I Tr. 280).

All Store Managers in District 380 are trained on and expected to use Virtual Coach. (M Tr. 71-72, 81, 254-255). Virtual Coach prescribes the expected outcome for specific partner behaviors. (M Tr. 71-75, 255; Er. Ex. 22). Thus, when an hourly partner (Barista or Shift Supervisor) has an attendance, conduct or performance issue, Store Managers are required to log on to Virtual Coach, and input information specific to the partner and conduct at issue. Virtual Coach then processes the information and determines the level of discipline to be issued. (B I Tr. 279-280, 387, 481; Er. Ex. 22; M Tr. 71-75). For example, if the underlying conduct involves poor attendance, Virtual Coach guides the Store Manager through a series of “yes” and “no” questions

based on the Company's attendance and discipline policies. (Er. Ex. 22). Virtual Coach asks the Store Manager whether the partner's conduct arose from "extenuating circumstances" or whether the partner is on "leave." It also asks whether the partner has received any "corrective action" on the attendance policy before, and if so, what level and when. Thus, Virtual Coach identifies which policies have been violated and tells the Store Manager what to do. The Store Manager is expected to follow Virtual Coach and does not have discretion to ignore its directives. (M Tr. 254). If a Store Manager wanted to deviate from a directive, he/she would have to consult with the District Manager for approval. (M Tr. 80-81, 255; B I Tr. 283). Should a Store Manager ignore Virtual Coach or fail to use it, they would be subjected to discipline, and there has been a least one such incident in Arizona. (M Tr. 73-75, 254-255, 265-266; B I Tr. 280).

Relatedly, Store Managers are reminded via Virtual Coach to contact their District Manager, who is expected to be involved in all levels of discipline for District 380 partners. (M Tr. 73, 255; Er. Ex. 22). Virtual Coach may also inform the Store Managers to contact Partner Relations for assistance. (M Tr. 73). Ultimately, if a Store Manager plans to issue a documented coaching, they must first consult with the District Manager. (M Tr. 72-75, 255, 270; B I Tr. 283-284; Er. Ex. 18). Indeed, if a partner feels like s/he has been disciplined improperly, s/he can appeal the decision to the partner relations team, which has the authority to change the decision. (M Tr. 269-270, 430 (Harrison)). Only the District Manager or Partner Relations has the authority to overturn a disciplinary recommendation from Virtual Coach and to approve partner discharges. (M Tr. 72-75, 269-270). Moreover, all of the corrective action forms utilized in District 380 and throughout the country are centrally created at the corporate level. (M Tr. 80; Er. Ex. 18).

The Union's witnesses testified that Store Managers are responsible for issuing discipline and terminating employees because a Store Manager said that certain conduct was not appropriate

and would be addressed, and because they identified certain disciplinable conduct and spoke to the Shift Supervisor about it. Such testimony should not be given any weight, however, because it lacks foundation in that they did not testify as to the steps in between seeing or identifying certain conduct and the resulting disciplinary action. Rather, Starbucks' evidence states exactly what happens—the Store Manager utilizes Virtual Coach, and the District Manager or partner relations team approves the disciplinary action. The Store Manager simply delivers the news of a disciplinary action. Indeed, the Union's witnesses admitted that they were not aware of all of the relevant steps or conversations related to discipline. (M Tr. 308-314, 320, 322, 348-351). In fact, Harrison testified that in issuing discipline, she was required "to use the tools" available to her like the Operational Excellence Guide, and also admitted that she did not issue any corrective actions while working as a Store Manager in District 380. (M. Tr. 372, 429-430). Accordingly, this testimony is not evidence of local store autonomy and should be accorded no weight.

h. Partners' Workplace Concerns are Centrally Handled at the District Level and Above.

Supporting its efforts to ensure consistency across stores, Partner Relations Manager Bailey is responsible for partner relations issues in Arizona and helps ensure that such issues are handled consistently on a state-wide basis. (M Tr. 240, 245). Starbucks also utilizes the Partner Contact Center, which acts as a call center to triage incoming partner complaints and questions. All District 380 partners are provided with contact information for the PCC via the Partner Guide. (M Tr. 91; B I Tr. 282; Er. Ex. 13). All partner calls to the PCC are answered by human resources professionals who are trained to calibrate with one another to drive consistent outcomes. Those answering the calls adhere to myriad of scripts to assess the situation. If the incoming call is about harassment or ethics, the partner call is forwarded to the business and ethics compliance team. (B I Tr. 389-390; M Tr. 256-257). If the incoming call is more human resources related, then it is

transferred to the partner relations team. In evidence as Employer Exhibit 23 is a PCC script to address an incoming complaint, which states that the complaint will be shared with the District Manager (DM), not the Store Manager, and the “partner can anticipate follow-up and/or resolution from their DM.” (Er. Ex. 23).

In addition, each store in District 380, including the Power and Baseline store, has posted the “Make the Right Call” poster. (M Tr. 243, 257, 258; Er. Ex. 214). These posters describe the roles of the talent acquisition team, the ethics and compliance team, and the partner relations team and provides contact information for each team. (M Tr. 243). Complaints to the ethics and compliance team or to the partner relations team are handled according to the nature of the complaint but are often referred to the District Manager for resolution. (M Tr. 74-75, 244-245).

The Union’s witnesses admitted that they have utilized the ethics and compliance hotline to make a complaint, that they can call partner relations with a complaint, that they can call the District Manager with a complaint, and that there are avenues other than Store Managers to get their concerns addressed—all of which exist at the District level or above. (M Tr. 308 (Alanna), 350 (Hejduk)).

In sum, Starbucks’ evidence demonstrates that all decisions regarding staffing, hiring, scheduling, promotions and disciplinary action are controlled by Starbucks’ centrally promulgated policies, handled in the first instance by Starbucks’ centrally deployed technology tools, and are handled with significant involvement from and approval by the District 380 District Manager. Although the Union’s witnesses testified about Store Manager, Assistant Manager, and/or Shift Supervisor involvement in these areas, their testimony was speculative, lacked personal knowledge, or was based on historic rather than current procedures. The evidence also shows that

many of the tasks on which the Union relies to establish local autonomy do not support its position because those tasks are also performed by Shift Supervisors and ASMs, whom the Union contends are not supervisors within the meaning of the Act. This factor strongly supports rebuttal of the single-store presumption.

B. The District 380 Stores are Functionally Coordinated at the District Level or Above.

As the foregoing discussion makes clear, all of the District 380 stores are functionally coordinated both in terms of operations and in terms of labor relations. Starbucks collectively purchases, receives, and delivers supplies and products through the one supply chain system to the stores without any store-level discretion. (M Tr. 84-85). When a store runs low on supplies, partners contact and travel to other stores to pick up the needed supplies. (M Tr. 150; B I Tr. 78-80). All stores in District 380 and throughout the U.S. utilize an automated ordering system for certain products like food and merchandise, and for items not automatically ordered, all stores utilize the same inventory management system for ordering supplies. (M Tr. 84-85).

Starbucks' uniform policies and procedures and deployment of technology tools to standardize hiring, scheduling, assigning work and discipline across District 380 is also strong evidence of functional coordination at the district and national level. Individual store managers, including the Power and Baseline Store Managers, do not have authority to deviate from the centrally promulgated procedures. (M Tr. 423-24, 426, 427, 433, 454 (Harrison)). The uniform deployment and utilization of technology tools also is designed to limit local store autonomy and Store Manager discretion over the areas in which these tools operate, and to ensure operational and labor relations uniformity across all stores in the district. (M Tr. 85, 86, 92, 94).

Perhaps most importantly, however, the functional coordination among the District 380 stores is demonstrated by the way Starbucks manages its partners on a district-wide basis. The

District 380 District Manager appoints all Store Managers in the district. (M Tr. 43). Four district stores are jointly managed, and the District Manager decides which Store Manager covers more than one store. (M Tr. 55). Hiring needs are identified on a district-wide basis, and the district holds district-wide hiring fairs. The District Manager visits stores in the district weekly, reviews staffing and hours reports weekly, conducts weekly meetings with all of the District 380 Store Managers, holds bi-monthly hiring and staffing meetings with all of the Store Managers in her district, holds promotional planning meetings with all of the Store Managers in her district, and is involved in all discipline and discharge decisions. (M. Tr. 54-55, 103).

Another strong example of the functional integration of the District 380 stores is the extensive partner interchange discussed below. Starbucks' operations are built on the premise that partners will work across the District 380 stores as business needs dictate. (M Tr. 30). For that reason, partners are hired with the expectation that they will work at multiple stores during their employment. (M Tr. 30; Er. Ex. 4). As explained in greater detail below, partners with "home" stores in District 380 can and do regularly work in other stores in District beyond their "home" store. (M Tr. 30-31, 34, 37). In fact, 58% of the partners who worked at the Power and Baseline Store between April 29, 2019 and November 14, 2021 were "borrowed" partners with different home stores. *See infra* at 38-39. (Er. Ex. 212).

But above and beyond these factors, functional coordination in District 380 is also demonstrated in the District 380 partner connection networks and affinity groups. Partners throughout the district communicate through a GroupMe group chat communication platform, by text message and by group chat. (M Tr. 99; B I Tr. 536).⁵ Partners use these methods to find

⁵ The Union's anticipated claim that this app is not a Starbucks-sanctioned app is a red-herring. The fact that partners regularly use the app across District 380 is what counts because it shows their interchangeability and contact. (M Tr. 99; B I Tr. 536). Moreover, the fact that a similar process is utilized

coverage or swap shifts with other partners in the district. (M Tr. 99; B I Tr. 536). These connections demonstrate the high-level of functional coordination among stores in District 380.

In short, Starbucks centrally controls nearly every aspect of day-to-day store operations at the District 380 level or above. This purposeful and detailed centralized decision-making ensures a consistent Starbucks experience for customers regardless of the District 380 store they patronize. This extensive centralized control also enables partners to work seamlessly in any District 380 store without additional training to deliver the same customer experience, while continuing to enjoy the same terms and conditions of employment regardless of the store in which they are working. The functional coordination of Starbucks operations also is strong evidence rebutting the single-store presumption and supports a multi-location unit consisting of all hourly partners working in District 380 as the only appropriate unit.

C. Partner Skills, Functions, and Working Conditions are the Same Throughout the District.

There is no dispute that all of the partners working in District 380 have the same basic job functions and skills,⁶ and enjoy the same wages, benefits, and other working conditions regardless of the store in which they work. Again, this is by design because it allows a District 380 partner to work seamlessly in any District 380 store without the need for retraining or making adjustments to wages and benefits.

in the Buffalo Market demonstrates that districts and markets operate similarly in this regard, and such contact is not mere happenstance.

⁶ The Buffalo ARD found that there was a meaningful functional difference between stores with drive-thrus and stores without drive-thrus. In actuality, the only functional difference between these types of stores is that partners working in stores with drive-thrus have to utilize a headset, which is a de minimis difference at most. (B II Tr. 59). Here, this difference is even further minimized because thirteen of the fourteen District 380 stores are drive-thrus and the one remaining store without a drive-thru is scheduled to be converted to a drive-thru store in 2022. (M Tr. 87).

1. All District 380 Partners Have the Same Job Functions and Skills.

Consistent with Starbucks' business model of delivering the same customer and partner experience regardless of individual store, partner skills, functions and working conditions are the exact same across District 380. Partners throughout the district perform the same functions and deliver the same customer service at every store in the district. The training, functions, and services are all derived from Starbucks' intentional and meticulous business plan to control how stores precisely operate to ensure consistency of the customer experience.

Partners throughout District 380 are required to follow the same operating and policy manuals developed at Starbucks' headquarters in Seattle, including the Siren's Eye, the Partner Guide, the Operations Manual, and the Operation Excellence Guide, which specify what food items will be included in the weekly menu, the menu prices, instructions on how to display and prepare food and drink items, the roles of the positions in the District, and any training necessary to complete these tasks. (M Tr. 90-92; B I Tr. 350-352).

Partners in District 380 all operate the same equipment and are assigned to the same predetermined in-store work locations to perform specific roles and routines as guided by the Play Builder tool. (M Tr. 89-90, 92; B I Tr. 93, 95-97; Er. Ex. 17). Once assigned to in-store locations by the "play caller" (who most often is a shift supervisor), the partners perform specific roles and routines per detailed guidelines. (Er. Ex. 17). For each role there is a corresponding routine than a partner must follow. (*Id.*). These roles and routines are consistent across District 380. (*Id.*; M Tr. 89-90). In addition, partners must also follow the same steps and instructions when performing all store-related operations, *e.g.*, opening the store, "clocking in" their time, displaying merchandise, creating and serving drinks and food, stocking merchandise, placing orders in the point of sale ("POS") system, closing out a transaction, and store closing duties. (M Tr. 89-90, 92; B I Tr. 89, 94-95, 96-97, 249-250, 356, 358-59; Er. Exs. 13, 17, 21).

2. All District 380 Partners Undergo the Same Orientation and Training, Which is Centrally Determined.

Orientation and training are also established on a Western Mountain Region-wide rather than a store-by-store basis. (M Tr. 70). For example, the Union's witnesses agreed that the Barista Basic Training Plan has a standardized script and modules, and Store Managers and Barista Trainers have no authority to deviate from the guide. (M Tr. 70-71, 75-80, 352 (Hejduk), 376 (Harrison); Er. Ex. 14). All partners in District 380 receive the same new hire orientation. (M Tr. 77-78, 376 (Harrison); B I Tr. 247-248; Pt. Ex. 8). The "First Sip" orientation is exacting to the level of detail that the same exact coffee is brewed for the new hire's first coffee tasting.

All Partners in District 380 also receive the same training regarding food and store safety, which is centrally promulgated by Starbucks' training team. (B I Tr. 87-88). Starbucks' Operations, Products and Learning Development Teams oversee partner training needs, and create and implement scripts for new promotions, including for promotions to the position of Shift Supervisor. (M Tr. 70-71, 75-80; B I Tr. 84-85, 369; Er. Exs. 14-15). There is no store-specific training, as all District 380 stores, and indeed all stores in the Western Mountain Region adhere to the same operating protocols developed centrally by Starbucks' headquarters. (M Tr. 70-71, 75-80).

* * *

The fact that Baristas and Shift Supervisors across District 380 possess the same skills, perform the same functions, receive the same orientation and training, and enjoy the same working conditions strongly rebuts the single-store presumption, and shows that a multi-location unit consisting of all hourly partners in District 380 is the only appropriate unit.

D. All District 380 Partners Share the Same Centrally Determined Wages, Benefits, and Working Conditions.

Partners who work in District 380 stores earn the same wage rate regardless of the specific

store in which they may be working on any given day. Wages and benefits for all partners in District 380 are set by Starbucks' compensation team in Seattle. (M Tr. 82; Er. Ex. 203). Store Managers have no ability to change the wages or benefits in any individual District 380 store. (M Tr. 91). Annual wage increases are centrally determined; Store Managers have no discretion over them. (M Tr. 83; B I Tr. 259, 284). Again, there is no differentiation based upon individual stores, which is consistent with the Starbucks model - that partners are available and seamlessly work across all District 380 stores while enjoying the same exact terms and conditions of employment.

All District 380 partners also receive the same exact vacation and paid time-off benefits. (M Tr. 83; B I Tr. 286-90, 294; Er. Exs. 19-20). In addition, all District 380 partners receive access to the same exact additional benefits, including, but not limited to:

- | | |
|---|---|
| • Medical, dental, and vision coverage (after 20 hours) | holidays |
| • Short- & Long-Term Disability Coverage | • Family expansion reimbursement |
| • Life Insurance | • DACA filing fees |
| • A yearly grant of stock | • Free bachelor's degree through Arizona State University |
| • Access to the Company's Stock Investment Plan | • Online courses on sustainability |
| • Company's 401(k) Plan | • Starbucks Coffee Academy |
| • Partner & Family Sick Time | • Coffeegear |
| • Paid Parental Leave | • Commuter benefits |
| • Lyra Mental Health | • Starbucks Rewards Partner Benefits |
| • Headspace | • Partner Discount Programs |
| • Weekly free coffee mark outs | • Giving Match |
| • Free coffee and food while working | • Partner Connection & Fitness Reimbursement |
| • Care@Work | • Elite Athlete Program |
| • Financial Assistance Program (CUP) Fund | • Partner Recognition |
| • Food discounts | |
| • Time and a half paid for | |

(M Tr. 83; B I Tr. 286-290, 294; Er. Exs. 19-20).

Beyond receiving the same wages and benefits, all District 380 partners enjoy the same working conditions regardless of the store in which they work on a given day. For example, all partners within District 380 wear the same uniforms, access the same timekeeping system, use the same POS system, perform the same job duties and provide the same customer experience regardless of store. (M Tr. 90; B I Tr. 292-293, 575). Working conditions do not vary by store.

E. The NLRB Has Held the Single-Store Presumption Rebutted Under Circumstances Similar to Those in This Case.

The quantum of evidence regarding central control of operations and labor relations, and common terms and conditions of employment in this case is similar to or greater than those cases in which the Board held that the employer had overcome the single-facility presumption. For instance, in *Super X Drugs*, 233 NLRB at 1114-15, the Board found that a multi-location unit was appropriate where the centralized control of operations and labor relations left the authority of store managers “severely circumscribed.” As in the instant matter, in *Super X*, all of the Company’s stores were similarly laid out and displayed and sold the same merchandise, and the district manager determined advertising, prices, operating hours, the number of employees in each position, and the hours to be worked by employees. The district manager was also required to approve leaves and pay raises, and while a store manager interviewed applicants and played a role in the hiring and firing process, the district manager was also a decision-maker in both. The Board found that the employer’s operations were “highly centralized” and that the only appropriate unit included all four of the employer’s stores in the Chicago area or all five of its stores in Cook County.

Similarly, in *Kirlin’s*, 227 NLRB at 1220-21, the Board held that a single-location unit was inappropriate because “of the integrated operation of the six stores, the centralized management of labor matters, commonality of supervision, interchange of employees, identical employee

functions and terms and conditions of employment, the limited personal authority of each store manager, and the proximity of the two Carbondale stores within the same shopping mall.” In its decision, the Board noted that purchasing, accounting and distribution of merchandise were handled centrally for all stores, all stores were similarly laid out and displayed and sold goods at the same prices, the operations manual was centrally drafted and established uniform guidelines for all stores, and employees performed the same functions, received the same wages and participated in common benefits across stores. While the individual store managers in *Kirlin’s* were involved in the hiring, firing, and discipline process, and could recommend the same, which far exceeds the involvement of Starbucks’ Store Managers in District 380, the Board found that the *Kirlin’s* district manager “share[d] final authority” with the store manager. *Kirlin’s*, 227 NLRB at 1221. Similar to the facts in this case, the store managers in *Kirlin’s* had, at best, “limited authority” in daily labor relations decisions, but the Board found that the centralized control over operations showed a “lack of autonomy at the store-level” that rendered a multi-location unit appropriate.

Similarly, in *Big Y Foods, Inc.*, 238 NLRB 860 (1978), the Board found a multi-location unit appropriate and held that the three petitioned-for stores lacked sufficient local autonomy. In its decision, the Board noted that “[a]lthough it is apparent that the individual store managers directly supervise employees, it cannot properly be concluded the managers significantly control or implement terms and conditions of employment of the liquor markets’ employees.” *Id.* at 861. While the Board recognized that local managers assigned duties and prepared schedules, this authority was circumscribed by the centralized control over employee hours and uniform policies. *See also Walakamilo Corp.*, 192 NLRB 878, 878 & n.4 (1971) (finding “individual store managers exercise little discretion” because the director of operations set wages, granted promotions, and

had final authority with regards to grievance adjustments, even though individual store managers may hire employees and discharge employees); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB 881, 882 (1971) (finding individual restaurants subject to “close centralized control” notwithstanding that individual store managers were authorized to hire new employees at the state’s minimum wage rate, could discharge new employees within a 90-day probationary period, and issue discipline); *White Castle System, Inc.*, 264 NLRB 267, 268 (1982) (noting individual store manager authority was “highly circumscribed” despite store supervisors being permitted to interview and hire employees subject to a district manager’s approval); *Nakash, Inc.*, 271 NLRB 1408, 1409 (1984) (finding individual store manager’s autonomy “severely circumscribed” where, although store manager hired individuals, the store manager had to adhere to “established guidelines” in hiring, and otherwise confer daily with a member of central management about hiring and firing decisions).

F. There is a High Degree of Employee Interchange Across the All Stores in District 380.

In addition to the significant evidence of centrally controlled operations and labor relations, the hearing record is replete with substantial testimonial and documentary evidence detailing the extensive level of partner interchange among stores in District 380. First, Store Managers in District 380 can and do cover multiple stores, and the District Manager may assign one Store Manager to cover another store due to vacation, illness, and the like. (M Tr. 55-56).

More importantly, partners may be directed to work a shift in any store in the district, regardless of which store is their home store, and this expectation is communicated during the hiring process and from the very beginning of employment. (M Tr. 34-39, 147-148). The District 380 District Manager is directly involved in finding coverage for stores, and if a partner refuses to work a borrowed shift, such a refusal is escalated to the District Manager for possible disciplinary

action. (M Tr. 40-41). Indeed, in a critical distinction from the Buffalo I case, and contrary to a primary basis for the decision there, a majority of the partners who worked in the Power and Baseline store were partners from other stores between April 29, 2019 and November 14, 2021. (Er. Ex. 212).

In fact, Starbucks provided raw data, with specific partner information, dates, stores, and time punch details, for all partners in District 380, and presented expert testimony from Dr. Abby Turner, who hold a Ph.D. in economics and public policy, to analyze and explain the data contained in Employer Exhibits 208, 209, and 210. (M Tr. 193, 194). This expert analysis compels the conclusion that Starbucks partners extensively interchange among the District 380 stores, thus, rebutting the single-store presumption.

1. Expert Testimony is Properly Admissible and Should be Given Significant Weight.

The Union objected to Dr. Turner's testimony on the grounds that it is NLRB's responsibility to interpret the interchange data, and because "it's not appropriate to have an expert witness in a pre-election hearing."⁷ (M. Tr. 228). These contentions are meritless and were correctly rejected by the Hearing Officer, who properly certified Dr. Turner as an expert.

Board law recognizes the value that expert testimony may have in its hearings and applies Federal Rule of Evidence 702. *See* § 16-702, ALJ Bench Book (Jan. 2021) (noting that the Board applies Federal Rule of Evidence 702, which allows expert testimony if it will "help the trier of fact to understand the evidence or to determine a fact in issue."). In fact, the Board has reversed and remanded decisions issued in representation matters when relevant expert testimony was

⁷ The Union also objected to Dr. Turner on the grounds that her testimony was cumulative. The Hearing Officer properly overruled this objection. No expert has previously testified regarding the statistical significance of interchange data in this case. The Union also objected to Dr. Turner's qualification as an expert, but her CV is in the record as Er. Ex. 211 and clearly establishes her qualifications by way of her educational background and experience.

excluded. *See E. I. DuPont de Nemours & Co.*, 162 NLRB 413, 413 n.2 (1999) (reversal of hearing officer’s decision to exclude expert testimony comparing the employer’s manufacturing process to the processes used in other industries during unit composition hearing); *see also New York Univ.*, 356 NLRB 18, 19 (2010) (reversing dismissal of representation petition to allow for development of a full evidentiary record including, among other things, expert testimony concerning whether the petitioned-for unit included employees under the Act).

Here, Starbucks presented a large volume of raw data regarding partner interchange and statistical analysis regarding the same is clearly relevant. In fact, the Board has specifically recognized the value of statistical analysis to contextualize interchange data, concluding in *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999), that interchange data presented without any statistical analysis was “of little evidentiary value.” Performing such a statistical analysis is not something that the Board or Regional Directors are required to attempt, nor are they authorized to hire economic experts like Dr. Turner of their own volition, should they be unable to do so. *See* 29 U.S.C. § 154(a) (“Nothing in this subchapter shall be construed to authorize the Board to appoint individuals . . . for economic analysis.”). It follows, therefore, that having an expert like Dr. Turner conduct a statistical data analysis and testify regarding what that data means in context, is not only relevant but inherently useful to assist the Regional Director to assess the matter before him, as the evidence presented regarding employee interchange bears directly upon the ultimate issues in this case.⁸

2. The Analysis of Starbucks’ Interchange Data Demonstrates Real and Substantial Partner Interchange Throughout District 380.

Dr. Turner’s analysis, report and testimony demonstrates that she not only analyzed

⁸All of the raw data Dr. Turner analyzed (Er. Exs. 208-210), the calculations she used to analyze that data, and the outputs from those calculations (Er. Exs. 212) are in the record. The outputs from Dr. Turner’s calculations are reflected visually in the figures found in Er. Ex. 212 and reproduced herein.

Starbucks' interchange data in District 380 as a whole, but also that she took steps to control for the impact of COVID-19, the impact of permanent transfers, and the impact of opening and closing stores. (See M Tr. 195-227). As the NLRB's case law makes clear, and as presented below, the rates of interchange identified by Starbucks' data and Dr. Turner's analysis of it strongly support rebuttal of the single-store presumption in this case. The data shows frequent interchange across District 380. Partners who work only in their home store are the minority in all of the District 380 stores; approximately 45 percent of partners worked in more than one store in District 380, and a significant majority of the partners working in the Power and Baseline store were "borrowed" partners from other home stores. (M Tr. 196-99). In fact, the Union's witnesses testified that they have worked at stores other than Power and Baseline in District 380. (M Tr. 300 (Alanna), 343 (Hejduk)). This level of interchange is sufficient to rebut the single-store presumption. *See, e.g., Budget Rent A Car*, 337 NLRB 884, 884-85 (2002) (19.0% interchange rate supported rebutting single-store presumption); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB 881, 882 (1971) (14.3% interchange rate supported rebuttal of single-store presumption); *McDonald's*, 192 NLRB at 878-79 (multi-location unit appropriate where 58 out of 243 employees were temporarily transferred and the interchange rate was less than 1%).

a. Almost Half of Partners Working in District 380 Work in More than One Store.

An analysis of the data available for non-exempt Starbucks partners working in District 380 which covers the approximately two and one-half year period between April 29, 2019 – November 14, 2021, shows that approximately 45 percent of partners worked in two or more stores, about 24 percent of partners worked in three or more stores, and about 12 percent of partners worked in four or more stores during this period. Conversely, just over half (55 percent) of the partners working in District 380 worked in only a single store (which may or may not be their

home store) during the data period. Figure 1 below illustrates the distribution of partners within District 380 by the number of stores in which they work.

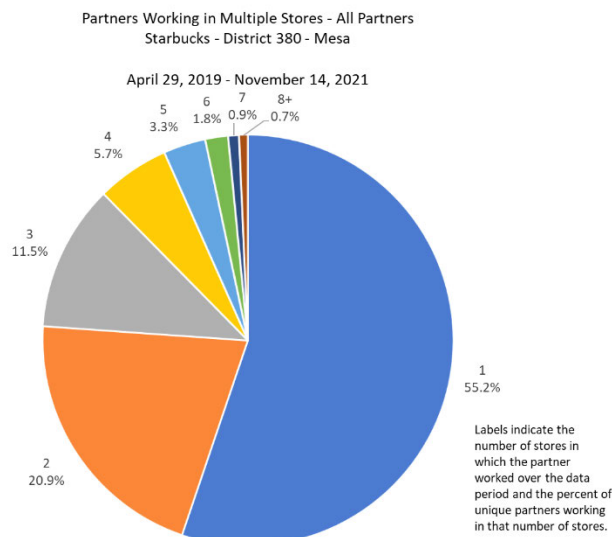


Figure 1

A similar analysis of the petitioned-for store shows that partners working in the Power and Baseline store at any time during the period covered by the data are similarly distributed to the overall District 380 population; just over half (55 percent) of partners ever working at Power and Baseline worked in two or more stores, about 36 percent of partners worked in three or more stores, and about 25 percent of partners worked in four or more stores during this period. Fewer than half of the partners working at Power and Baseline worked only in that store (which, again, may or may not be their “home store”) during the data period. Figure 2 below illustrates the distribution of partners working at Power and Baseline by the number of stores in which they work.

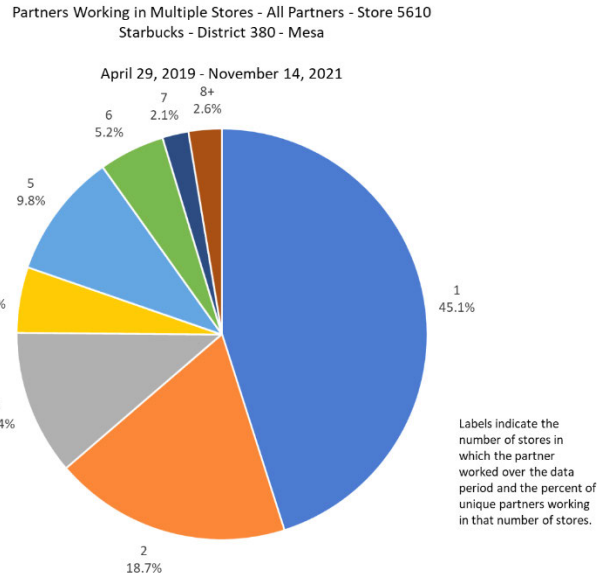


Figure 2

b. Partners Working Only in Their Home Store Are the Minority in Every Store in District 380, Including the Power and Baseline Store.

Figure 3 below indicates which partners working in each store are assigned to that store as their home store (the blue and orange portions of each bar) as opposed to having another store as their home store (the gray portion of each bar). In fact, a significant difference in this case versus Buffalo I is that here, at Power and Baseline, approximately 42 percent of the partners working in the store during the data period were assigned that store as their home store, while the other 58 percent of partners working at Power and Baseline during the review period were “borrowed” partners assigned to other home stores. Furthermore, there are no stores within District 380 that are staffed entirely by partners from that home store; in fact, partners that only work in their home store make up the minority of partners ever working at a store during the data period in every store. For all but one store in the district, partners that only work in their home store make up fewer than a third of the overall population of partners working in the store.

Together, the blue and orange parts of each bar in Figure 3 comprise the population of partners assigned to each store as their home store. Within this population, the percent of partners working at more than one store varies from about 34 percent to about 59 percent.⁹ Within the partners whose home store is the petitioned-for store (5610), about one-third work in more than one store.

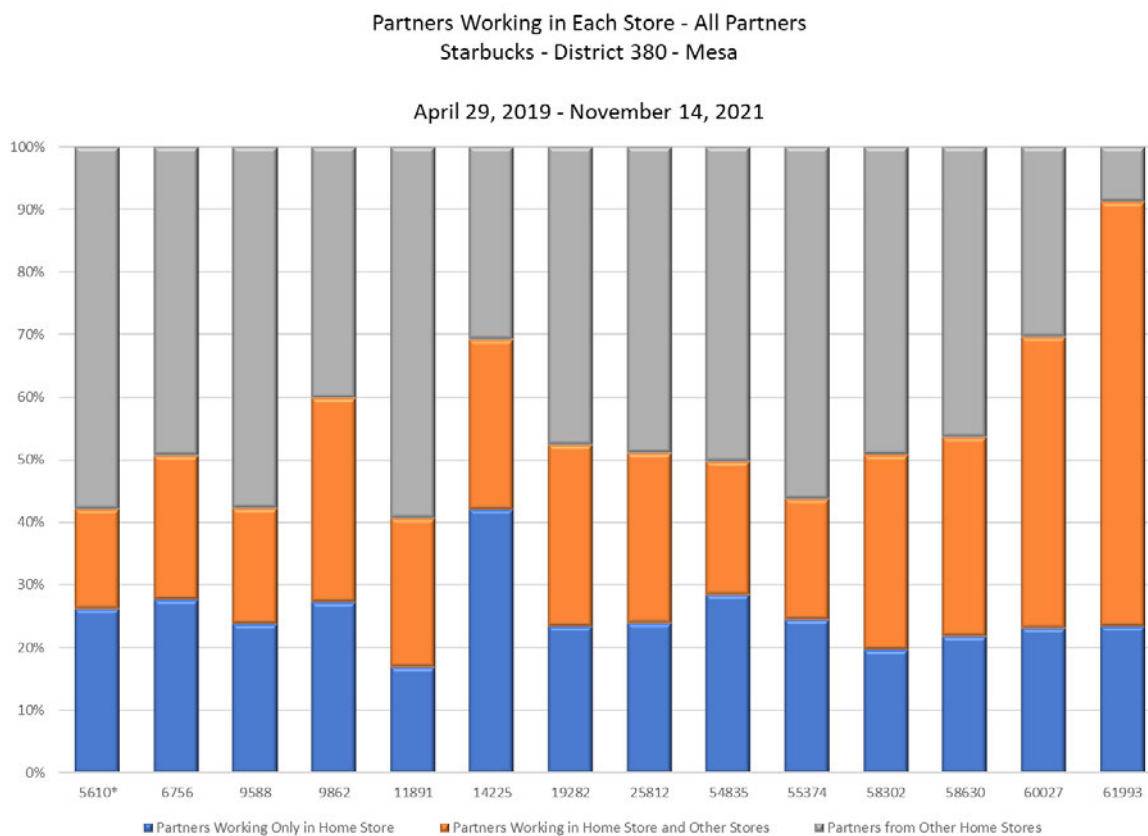


Figure 3

⁹ The percent of home store partners that work in more than one store can be calculated from the source document for Figure 3, dividing the column “# Emps Lent” by the column “# Home Emps” from the tab “ByStore”. This is visually represented by the ratio of the size of the orange bar to the size of the orange and blue bars together.

c. Almost One-in-Four Store-Days Require Borrowed Partners District-Wide.

Figure 4 below illustrates how common it is for a store within District 380 to operate using at least one borrowed partner in the store. The red-dotted line indicates the district average of about 25 percent of store-days – one in four – which require borrowed partners to operate. Put another way, one out of every four days, a store engages in partner interchange. Across stores, the percent of days with interchange varies from about 14 percent to 40 percent. Within Power and Baseline, about 24 percent, or one in every four days, are staffed using borrowed labor.

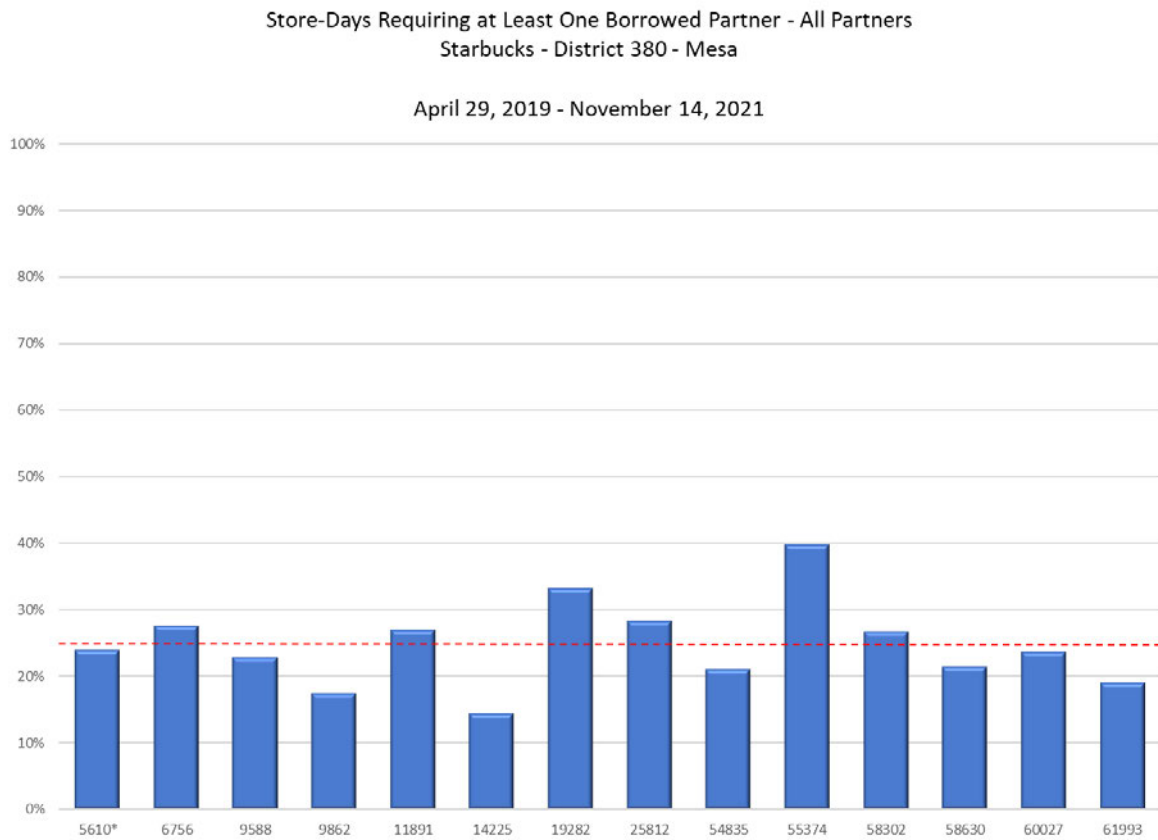


Figure 4

d. A Widespread Pattern of Geographic Borrowing Occurs Across All Stores in District 380

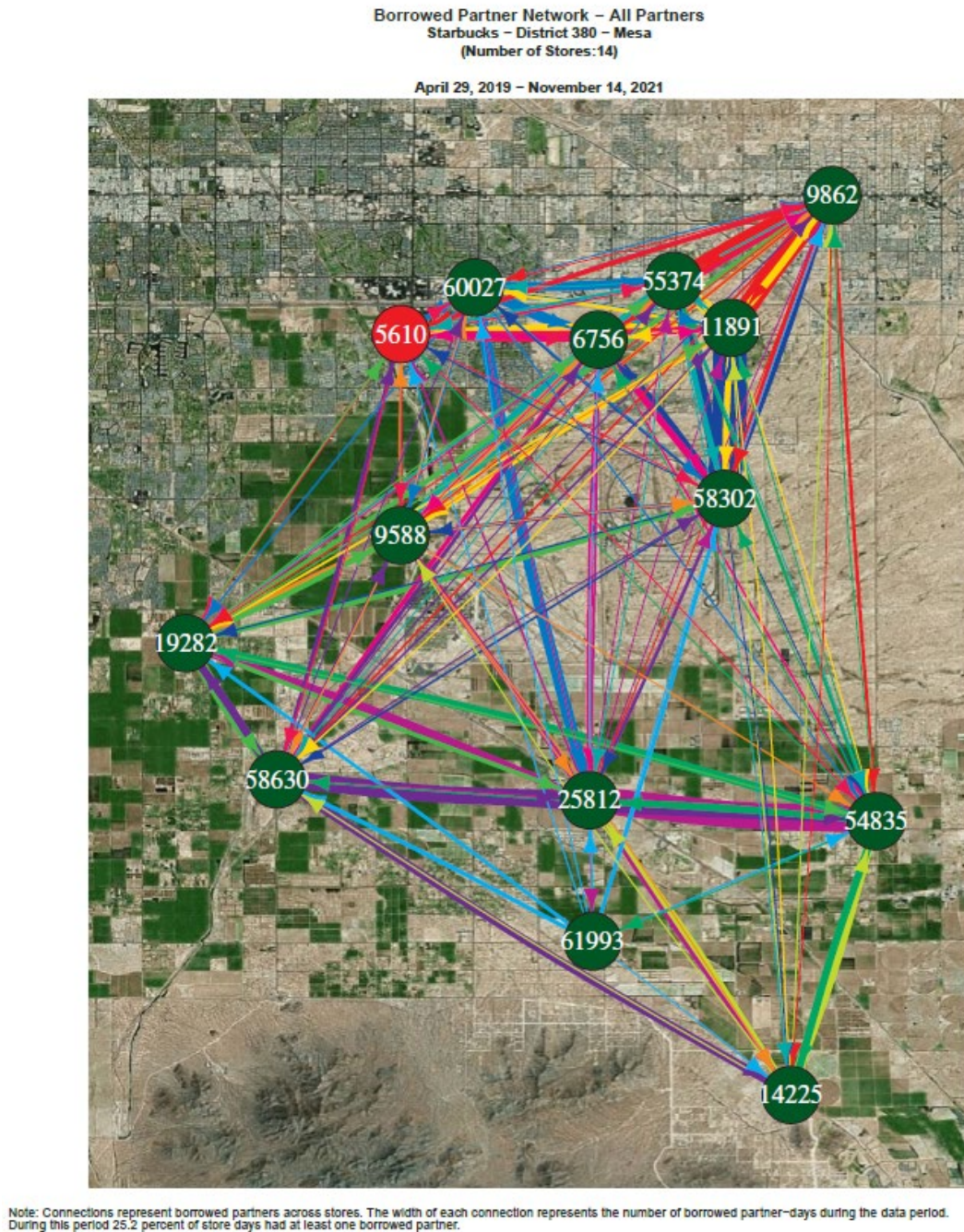


Figure 5

Figure 5 above is a map indicating the locations of all Starbucks stores in District 380. The lines connecting the stores indicate the flow of borrowed partners across stores, with arrows

indicating the direction of the borrowing. This map illustrates the extent to which borrowing is widespread across the district. There are no stores that are isolated or excluded from borrowing or lending partners; even more geographically separated District 380 stores (e.g., Store 14225) borrow from and lend partners to many other stores within the district. Nor are any smaller clusters of stores isolated from the rest of the district, sharing partners only amongst themselves. A clear pattern of regular interchange between all stores in the district emerges from the network illustrated in the map.

e. Changes During COVID Are Not Driving Patterns of Regular Interchange Between Stores.

Dr. Turner also analyzed the impact of the COVID-19 pandemic on the pattern of interchange in District 380. If interchange were being driven primarily by the period of data since the initial COVID shut-down in March of 2020, the patterns of borrowed partner labor would be absent from the data when limited to the pre-COVID period (before March 1, 2020). However, this data still show a significant measure of regular interchange:

- Across the district, 35 percent (about 1 in 3) of partners in the data worked in more than one store during the 10-month, pre-COVID period. Within Power and Baseline, 45 percent (nearly half) of partners worked in more than one store.
- Partners working only in their home store remained the minority in every store in the District 380.
- With the exception of stores opening during this period (which show higher percentages), up to 48 percent of home-store partners worked in stores other than their home store across District 380. Within the petitioning store, 16 percent (about 1 in 6) of partners with this home store worked in more than one store.
- Across District 380 more than 25 percent (1 in 4) of store-days relied on borrowed partners. Within the petitioning store 33 percent (about 1 in 3) of days required borrowed partners during the pre-COVID period;
- Even in the pre-COVID period borrowing was widespread across the district. There are no stores that were isolated or excluded from borrowing or lending partners, nor were any smaller clusters of stores isolated from the rest of the district, sharing

partners only amongst themselves. A clear pattern of regular interchange between all stores in the district is demonstrated by the data.

- The borrowing of labor across the district continues to show a pattern year-round and regardless of the day of the week. On average, 2.4 percent of partner shifts were borrowed each day across the district during the pre-COVID period, nearly the same rate as across the entire period.

f. The Transition and Training of Labor Associated with Opening Stores Within the District Are Not Driving Interchange.

Dr. Turner further assessed the impact of opening stores on interchange within District 380.

If interchange were being driven primarily by the transition and training of partners associated with opening stores within the district, the patterns of borrowed partner labor would be absent from the data when excluding any shifts associated with these stores (as either the home store or the worked store). However, this data still shows a significant measure of regular interchange:

- 38 percent (more than 1 in 3) of partners in the data worked in more than one store during the data period.
- Partners working only in their home store remained the minority in every store in the district.
- Across the district, up to 47 percent of home-store partners worked in stores other than their home store. Among those whose home store is Power and Baseline, 34 percent worked in other stores during this period.
- More than 18 percent (approximately 1 in 5) of store-days relied on borrowed labor within the Mesa district. Power and Baseline also relied on borrowed partners in approximately 1 in 5 workdays.
- Even removing any borrowing that may be associated with a store opening in District 380, borrowing remained widespread across the district. There were no stores that were isolated or excluded from borrowing or lending partners, nor were any smaller clusters of stores isolated from the rest of the district, sharing partners only amongst themselves. A clear pattern of regular interchange between all stores in the district emerges from the network illustrated in the map.
- The borrowing of labor across the district continues to show a regular pattern year-round and regardless of the day of the week. On average 1.5 percent of partner

shifts were borrowed each day across the district after removing stores that opened during the period.

g. Temporary Sharing of Labor Preceding or Following a Permanent Transfer of a Partner Between Stores Is Not Driving Interchange.

Dr. Turner additionally analyzed the data controlling for permanent transfers between stores.¹⁰ If interchange were being driven primarily by the sharing of partners preceding or following a permanent transfer of a partner between stores within the district, the patterns of borrowed partner labor would be absent from the data when excluding any shifts associated with these movements. However, even the most extreme test of this hypothesis, excluding all partners from the data if they ever experienced a permanent transfer, still shows significant measures of regular interchange:

- Across the district more than 33 percent (about 1 in 3) of partners in the data worked in more than one store during the data period. Within Power and Baseline, 39 percent of partners worked in more than one store.
- Partners working only in their home store remained the minority in all but one store (14225) in District 380.
- Up to 67 percent of home-store employees worked in stores other than their home store across District 380. Within the petitioning store, approximately 21 percent (1 in 5) partners with this home store worked in more than one store.
- Nearly 13 percent (about 1 in 7) of store-days relied on borrowed labor within the district, and more than 14 percent of Power and Baseline store-days rely on borrowed partners.
- Even after removing any partners who ever had a permanent transfer from the data, borrowing was widespread across the district. There are no stores that were isolated or excluded from borrowing or lending partners, nor were any smaller clusters of stores isolated from the rest of the district, sharing partners only amongst

¹⁰ In its Order denying Starbucks' Request for Review in Buffalo I, the Board disavowed the ARD's "suggestion that *Lipman's*, 227 NLRB 1436, 1438 (1977), stands for the proposition that permanent transfers are not relevant to the Board's analysis of employee interchange in this context." (03-RC-282115, et al, Order at 2 n.2).

themselves. A clear pattern of regular interchange between all stores in the district emerges from the network illustrated in the map.

- The borrowing of labor across the district continues to show a regular pattern year-round and regardless of the day of the week. On average 1.6 percent of partner shifts were borrowed each day across the district after excluding partners who ever had a permanent transfer during the data period.

In sum, the undisputable data confirms what every partner in District 380 already knows - Baristas and Shift Supervisors in the district frequently work in multiple stores. This high level of partner interchange is obviously by design, not happenstance, as the Company's business model is premised on implementing the same exacting operational protocols across all stores for customer consistency, and utilizing a dedicated workforce of partners who are able to seamlessly work in any District 380 store to meet business needs.

h. The Interchange Data Exceeds What the NLRB Has Required in Finding the Single-Store Presumption Rebutted.

The Company's data far exceeds the baseline standards for rebuttal of the single-location presumption in cases holding that a multi-location unit was appropriate versus the petitioned-for single stores. *See Budget Rent A Car Sys., Inc.*, 337 NLRB at 884-885 (concluding when taken as a whole, single-location presumption was rebutted where evidence demonstrated that temporary transfers occur "a couple of times per month" and employer presented evidence of four temporary transfers over the first few months of the year in a proposed unit of 21 (19.0%)); *Kirlin's Inc. of Cent. Ill.*, 227 NLRB at 1220-1221 (explaining that transfers among stores to cover employee illnesses, vacations, training, and conducting inventory support a rebuttal of the presumption that a single-location unit is appropriate); *Super X Drugs*, 233 NLRB at 1115 (finding single-location presumption rebutted where employer presented evidence of 21 instances of temporary transfer and 3 permanent transfers out of an employee complement of 65 (32.3% temporary transfer rate)); *Gray Drug Stores, Inc.*, 197 NLRB 924, 924-926 (1972) (concluding there was "substantial and

frequent interchange” supporting a multi-location unit where approximately 300 out of 700 employees (42.8%) engaged in temporary transfer.); *McDonald's*, 192 NLRB 878, 878-879 (1971) (holding multi-location unit was appropriate where 58 out of 245 employees (23.7%) were temporarily transferred and the overall interchange was less than 1%); *Twenty-First Century Rest. of Nostrand Ave. Corp.*, 192 NLRB at 882 (finding a multi-location unit was appropriate where managers transferred employees “to handle unusual changes in in the volume of business at particular outlets” and 45 to 50 employees out of 350 employees (14.3%) were temporarily transferred).

i. The Union’s Labelling the Interchange “Voluntarily” Does Not Diminish the Interchange Evidence.

Faced with this extensive and irrefutable data proving the high level of partner interchange (which partners know exists), the Union sought to adduce testimony to label the partner interchange as “voluntary” in that partners decide when and where they want to work. Put simply, the Union wants the Region to believe that partners decide for themselves if they work and where they work. The Union did not provide any data or reliable testimony as to its voluntariness claims, but only relied upon statements by witnesses who all woodenly testified off the same direct examination script that they volunteered to work in other stores. Moreover, Union witnesses admitted that if a sufficient number of volunteers to cover the necessary shifts could not be found, someone would have to be forced to cover the shifts. (M Tr. 323-24, 356-357).

The reality, as detailed in the record, is that Starbucks operates a business and meets its forecasted and actual customer needs by scheduling and requiring its partners to work as scheduled, just as any business schedules and requires its employees to work. Partners do not simply decide when and where they want to work. Rather, they are scheduled to work and do work as scheduled. As with other businesses, partners do fill-in for other partners, but that commonplace

business fact does not lessen the significance of the high level of partner interchange. Starbucks allows partners in different stores to exchange shifts provided it meets business needs because that flexibility is an interest partners share in a closely integrated structure. To answer the ultimate question of community of interests, voluntary interchange should not be given less weight when it is clearly a shared interest for partners to get their desired number of hours while at the same time providing them the ability to adjust their working schedules without a detrimental impact to the employer's business.

The record evidence details that Starbucks created a staffing model that is *specifically designed* to ensure that staffing needs are met by partners who regularly work in multiple stores. All partners are informed of this expectation upon hire and the culture of interchangeability permeates across District 380. Therefore, the Starbucks staffing model is designed to account for market-wide staffing through volunteers. (M Tr. 44; B I Tr. 751). But that does not mean partners simply decide when and where they want to work without regard to the business needs. Of course, Starbucks can and does mandate when necessary that partners work in specific stores to fill specific needs. (M Tr. 39-40).

Moreover, there is no basis in Board law for the Union's position that a partner's willingness to work across multiple stores as a clear expectation upon hire somehow undermines the extent of employee interchange under the law. The focus of the interchange analysis is whether a significant portion of the workforce is involved in interchange, which is patently the case herein.¹¹

¹¹ While Starbucks believes that the data overwhelmingly supports a multi-location finding, interchange is not a necessary condition for overcoming the single-location presumption. *See V.I.M. Jeans*, 271 NLRB 1408, 1409 (1984) ("Viewed against the background of the highly centralized administration of all nine stores, the daily contact with [Company President] and the other supervisors and the restricted authority of the store manager, the fact that there is not substantial employee interchange pales in its importance to the determination of the issue.").

In addition to the high level of partner interchange, the record evidence establishes extensive contact among the District 380 partners. District 380 partners have regular contact by working together, connecting via email, texting, calling one another, social media and chat groups, and attending partner network (affinity group) and mentoring events in the district. (M Tr. 39, 54, 65-66). Also, partners have contact with one another and share supplies across District 380's stores. (M Tr. 150-51). This level of contact further supports a multi-location unit.

* * *

The extensive partner interchange in District 380 strongly rebuts the single-store presumption, and shows that a multi-location unit consisting of the entire district is the only appropriate unit.

G. All District 380 Stores are Located in Close Proximity to One Another, and Closer than the Locations in Many Multi-Location Units Found Appropriate by the Board.

As Employer Exhibit 206 shows, all of the stores in District 380 are in relatively close geographic proximity to one another. (M Tr. 114; Er. Ex. 206). All the District 380 locations are within 4.3 miles of another store with the average distance between stores being just 2.5 miles. *Id.* The geographic proximity of the stores in District 380 is reinforced by the interchange data mapped on Figure 5 generated by Dr. Turner and reproduced above.

This close proximity between stores is intentional. Starbucks does not select store sites based on the site's proximity to another Starbucks store, but rather based on its efforts to gain market share over its competitors in the district. (B I Tr. 53). Further, Starbucks has intentionally designed its business operations, including its district structure to facilitate the movement of partners across stores in close geographic proximity to one another. This fact is evident in the district-based hiring process, the district-based scheduling process, and the significant evidence of partner interchange between stores. Moreover, these stores are significantly closer together than

the stores in *Gray Drug Stores*, 197 NLRB at 924-926, which were deemed sufficiently close together for a multi-location unit despite being located along a 300 mile stretch up the Florida coast. *See also Dayton Transp. Corp.*, 270 NLRB 1114, 1115-16 (1984) (terminals were a total of 175 miles apart were not distant and, in any event, the nature of the employer's operations, the similarity of skills, and the frequency of interchange among drivers at the terminals and the resultant commonality of supervision demonstrated a shared community of interests rendering a single-location unit inappropriate).

* * *

The close geographic proximity of the stores in District 380 strongly rebuts the single-store presumption, and supports a multi-location unit consisting of the entire district as the only appropriate unit.

H. The Parties Have No Bargaining History But Partners Across District 380 Have Shared Interests.

While there is no bargaining history, the evidence in this case shows that Starbucks' hourly partners share a strong community of interests throughout District 380. Bargaining on a single location basis is inconsistent with the Company's business model premised on partners seamlessly working across District 380 stores, including the petitioned-for Power and Baseline store. On the other hand, bargaining on a multi-location basis is consistent with the Company's highly integrated operations, manifested through the high level of partner interchange. Furthermore, bargaining at a single location does not make practical sense because there is a lack of local autonomy at the store level.

IV. THE UNION'S EFFORT TO SECURE VOTES IN A SINGLE DISTRICT 380 STORE DEFIES THE REALITY OF DISTRICT 380 OPERATIONS AND IS NOT CONDUCTIVE TO STABLE LABOR RELATIONS.

The Union's effort to fracture District 380 and seek an election in a single store, or likely

in a series of single-store units as it is doing in Buffalo and Boston, is not conducive to stable labor relations. Courts and the Board have long recognized that, in exercising its discretion to determine a unit appropriate for the purposes of collective bargaining, the Board must assure that the approved unit creates a situation where stable and efficient bargaining relationships can occur. *See Colgate-Palmolive-Peet Co. v. NLRB*, 338 U.S. 355, 362 (1949) (“To achieve stability of labor relations was the primary objective of Congress in enacting the [NLRA].”); *NLRB v. Catherine McAuley Health Center*, 885 F.2d 341, 344 (6th Cir. 1989) (“In addition to explicit statutory limitations, a bargaining unit determination by the Board must effectuate the Act’s policy of efficient collective bargaining.”).

The goal of employee free choice must be balanced with the need to assure a stable, efficient collective bargaining relationship. *See Allied Chem. Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172-73 (1971) (citing *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 165 (1941)); *Kalamazoo Paper Box Co.*, 136 NLRB 134, 137 (1962)). “As a standard, the Board must comply, also, with the requirement that the unit selected must be one to effectuate the policy of the Act, the policy of efficient collective bargaining.” *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. at 165. To do otherwise undermines, rather than promotes, efficient and stable collective bargaining. *See, e.g., Bentson Contracting Co.*, 941 F.2d 1262, 1265, 1269-70 (D.C. Cir. 1991); *see also Fraser Eng’g Co.*, 359 NLRB 681, 681 & n.2 (2013).

The statutory requirement of stable labor relations and effective collective bargaining is a prominent reason why the Board and courts have emphasized that “the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various group of employees in the plant and is thus an important consideration in any unit determination.” *Bentson*, 941 F.2d at 1270, n.9 (citing

Gustave Fisher, 256 NLRB at 1069 n.5 and quoting *International Paper Co.*, 96 NLRB 295, 298 n.7 (1951)); *Catherine McAuley*, 885 F.2d at 345; *Fraser Eng'g*, 359 NLRB at 681 & n.2. As similarly observed in *NLRB v. Harry T. Campbell Sons' Corporation*:

But winning an election is, in itself, insignificant unless followed by stable and successful negotiations which may be expected to culminate in satisfactory labor relations....If the Board's selection of the appropriate bargaining unit...[here, a separate department of an integrated quarry operation] were to stand and bargaining is undertaken, neither party on the stage at the bargaining table could overlook the fact standing in the wings are more...[unrepresented] employees, employees who cannot be separated in terms of labor relations from the small group of employees directly involved.... The Board here has created a fictional mold within which the parties...[must] force their bargaining relationships. In the language of *Kalamazoo Paper Box Corp.*...such a determination "could only create a state of chaos rather than foster stable collective bargaining," because in the "fictional mold" the prospects of fruitful bargaining are overshadowed by the prospects of a breakdown in bargaining.

407 F.2d 969, 978 (4th Cir. 1969). Fruitful bargaining breaks down because both parties would be necessarily focused on the impact of their bargaining decisions on the larger, unrepresented group of employees with whom the unit employees clearly share a significant community of interests. *See also Szabo Food Servs., Inc. v. NLRB*, 550 F.2d 705, 709 (2d Cir. 1976) ("In view of the high degree of integration of the employer's...business operation, the practical necessities of collective bargaining militate against the creation of a fractured bargaining unit, with its attendant distortion of the employer's business activities and labor relations....").

The Union's effort to separate a single store from the fourteen stores in the highly-integrated District 380 creates the very situation the Supreme Court, numerous Courts of Appeal, and the Board have cautioned against. As fully explained above, virtually all of the bargainable employment terms are controlled at the district level, regional level, or national level. Starbucks has deliberately organized the district in this way so that: (1) the customer experience in each store

is the same; and (2) District 380 partners can and do work in any store in the market without the need to retrain, while receiving the same wages and benefits and utilizing the same policies, human resources procedures and technology. This is truly a district-based rather than store-based operation. As a result, allowing bargaining to occur on a store-by-store basis, rather than a district-wide basis, would create a “‘fictional mold’ [in which] prospects of fruitful bargaining are overshadowed by the prospects of a breakdown in bargaining.” *Harry T. Campbell Sons’ Corp.*, 407 F.2d at 978 (citing *Kalamazoo Paper Box Co.*, 136 NLRB at 137).

V. THE UNION’S EFFORT TO HOLD ELECTIONS IN THREE SINGLE-STORE BARGAINING UNITS VIOLATES SECTION 9(C)(5).

Further, ordering an election solely at the Power and Baseline store would generate a violation of Section 9(c)(5), which provides: “[i]n determining whether a unit is appropriate... the extent in which the employees have organized shall not be controlling.” 29 U.S.C. § 159(c)(5). The U.S. Supreme Court has cautioned that enforcing courts “should not overlook or ignore an evasion of the § 9(c)(5) command.” *NLRB v. Metro. Life Ins. Co.*, 380 U.S. 438, 442 (1965). The community of interest facts at issue, precedent with respect to determining the appropriate bargaining unit, and whether the unit determination is adequately explained, are all analyzed in determining whether a Section 9(c)(5) violation exists. *See, e.g., Lundy Packing Co.*, 68 F.3d 1577, 1580-83 (4th Cir. 1995); *May Dept. Stores Co. v. NLRB*, 454 F.2d 148, 150-51 (9th Cir. 1972).

In this case, the evidence and the law demonstrate that the single-store presumption has been rebutted, and that the smallest appropriate unit is one consisting of all hourly Baristas and Shift Supervisors working in District 380. Just as in *Szabo Food Markets*, 126 NLRB 349, 350 (1960), where the Board found that an arbitrary grouping of stores was controlled by the extent of organization, the single store petitioned-for by the Union is part of the larger District 380; it is operated based on policies and procedures applicable to all stores in the district; the partners

working in the Power and Baseline store have the same training, wages, benefits, uniforms, and employment policies; and, they interchange on a frequent basis between stores in the district. There is simply no basis on which to carve out one store from the whole of District 380. On these facts, and in light of the Board precedent discussed above, the Union's selection of the Power and Baseline store in which to pursue an election is arbitrary and controlled by the extent of its organizing in violation of Section 9(c)(5) of the Act. *See also Malco Theatres, Inc.*, 222 NLRB 81, 82 (1976) (petitioned-for unit of five theaters out of eight in the Memphis area was inappropriate where employees at all theaters had virtually identical wages and benefits, common supervision, common operating policies, employee interchange between theaters, and were all located in a metropolitan area); *Kansas City Coors*, 271 NLRB 1388, 1389-90 (1984) (petition seeking only some, not all of employer's locations was inappropriate where locations were only 25-30 miles apart at most, all labor relations policies and methods of operation were employer-wide and controlled by employer policy, employees at the stores performed the same work in the same job classifications and under the same employment terms, and there was "some" interchange of employees and equipment among the locations).

VI. A MANUAL ELECTION MUST OCCUR.

Finally, for all of the reasons set forth in Starbucks' Statement of Position, the Region should order a manual election in this case and utilize the *Davison-Paxon* formula, given the utilization of part-time partners across multiple stores in District 380 ¹²

¹² In the event the Region orders a mail ballot election, Starbucks requests that ballots are returnable to the Region's office five weeks after mailing to account for the upcoming holiday season and the United States Post Office's publicly announced slower delivery times. Furthermore, Starbucks requests that the Region conduct the ballot count on a day to be determined by the Region within fourteen to twenty-one days after the ballot return date.

VII. CONCLUSION.

For all of the above reasons, the Union's request for a randomly selected single-store election in District 380 is not appropriate. Starbucks respectfully requests that the Region directs a multi-location election for the baristas and shift supervisors working across the fourteen District 380 stores and dismiss the Union's petition.

Respectfully submitted,

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CERTIFICATION OF SERVICE

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**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28**

Starbucks Corporation,

Employer

and

28-RC-286556

Workers United,

Petitioner.

WORKERS UNITED'S POST-HEARING BRIEF

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PRELIMINARY STATEMENT

The question before the Regional Director is whether Starbucks Corporation (hereinafter “Company”) has successfully rebutted the NLRB’s presumption that a single-store unit is appropriate to an RC petition filed by Workers United (hereinafter “Union”) at Starbucks Store #5610 (Power & Baseline) in Mesa, Arizona. Starbucks has not rebutted the presumption.

The two most critical factors under the law strongly support the single-store presumption remaining in place: Store Managers exercise all meaningful control over labor relations, and employee interchange is infrequent and always voluntary. The remaining factors under the law also favor single-store units. Starbucks relies on voluminous company policies that show an integrated business in various aspects, speculative witness testimony about what corporate representatives expect happens in stores, and witness testimony about changes in the Company’s operations since the union campaign went public. In fact, the Company has gone further and apparently made self-serving changes in response to the Union’s campaign, and might even attempt to rely on those changes in arguing its case. Despite all this, Starbucks’ showing is not enough to overcome the law’s strong preference for single-store units. By contrast, the Union relies on the testimony of employees who work in the stores, the first-hand testimony of one of the store’s previous Store Managers, and numerous statements in the Company’s own documents that support a single-store unit.

Of course, the parties have been here before and decided an identical issue based on facts that are functionally identical. Much of this discussion repeats the points raised by the Union in Case Nos. 03-RC-282115, 03-RC-282127, and 03-RC-282139 (consolidated) (hereinafter “the first case”) and 03-RC-285929, 03-RC-285986, and 03-RC-285989 (consolidated) (hereinafter “the second case”). For the reasons stated in the Union’s various submissions in those cases, the

reasons stated in the Acting Regional Director's Decision and Direction of Elections in the first case, dated October 28, 2021 (hereinafter "DDE"), and the reasons stated in the NLRB's denial of the Company's Request for Review in the first case, dated December 7, 2021, the Company's arguments continue to fail in this case.

For these reasons, as described in more detail below, the Union respectfully requests that the RD issue a Decision and Direction of Election to hold an election at the Power & Baseline store as soon as practicable.

FACTUAL BACKGROUND

The great majority of the relevant facts are discussed in the respective sections of the Argument & Analysis section below. In the interest of not inflating an already-lengthy discussion, this section summarizes the areas of evidence the parties introduced at the hearing.

The Union presented three witnesses to testify about activity in the store at issue: Liz Alanna, a Shift Supervisor; Michelle Hejduk, a Shift Supervisor; and Brittany Harrison, a former Store Manager who just left her employment with Starbucks in late 2021. The Union witnesses testified extensively about the various components of control over labor relations and contradicted the generalized testimony from Company witnesses. Store Managers play by far the biggest and most meaningful role in virtually every aspect of labor relations which the Board considers, so the majority of the Union witnesses' testimony focused on the activity they have personally witnessed by Store Managers. In addition, Brittany Harrison's testimony provides a firsthand account of the Store Manager's role at the Power & Baseline store and in Starbucks stores across the country. All of this testimony, in addition to the various documentary evidence described in the Argument & Analysis section below, served to undermine or make irrelevant the far more generalized testimony of the Company witnesses on these questions. As such, the Union's position is that the

three Union witnesses' testimony should be given far more weight regarding what truly happens at the store in question, when contrasted with the disconnected and self-serving testimony of Company witnesses.

As the witnesses testified, Store Managers are responsible for every meaningful aspect of hiring new employees. T3 284-85; T3 365-66; T2 211; T1 500 – 503; 592-600; 688-93.¹ Company documents reiterate this in detail.

Store Managers are responsible for disciplining and terminating employees. T3 286-87; T3 367-72; T2 212-14; T1 503-07; 600-02; 648-51; 693-95. Various Company and Petitioner exhibits reinforce this conclusion, as District Managers appear to play no meaningful role, and Store Managers exercise a great deal of important judgment in carrying out these duties.

In addition, Store Managers exercise control over labor relations in other meaningful ways. Store Managers are responsible for orienting new employees at their stores. T3 288; T3 375-76; T2 215; T1 507-08; 602-03; 651; 695. This was reflected in the witnesses' testimony as well as Company documents regarding training. Store Managers exercise their judgment in deciding which employees in a store should be eligible for promotion, and then guide those employees through the process. T3 289; T3 377-78; T2 216; T1 509-11; 603-04; 695-97. This process is also reflected in various Company documents. Store Managers also carry out all meaningful duties regarding scheduling, time tracking, payroll, and staffing issues. T3 378-86; T2 216-21; T1 511-14; 604-06; 653-54; 697-98. Again, Company documents also make it very clear that Store Managers carry out these duties, and that no other representative has a meaningful role. Similarly, Store Managers are responsible for approving time off for store-level employees. T3 386-87; T2

¹ References to the transcript from the first case are cited as T1, followed by the page number. References to the transcript from the second case are cited as T2, followed by the page number. References to the transcript from this case are cited as T3, followed by the page number.

220-21; T1 514-23; 606-07; 654-55; 698-99. In addition to the Union witnesses' testimony, there is an indisputable record of time off approvals in the Starbucks Partner Hours app. See e.g., Pet. Ex. 1. Starbucks documents also reiterate that Store Managers have this responsibility and carry out this role on the ground. Store Managers are also responsible for carrying out evaluations of employees. T3 387-88; T2 216; T1 523-261 607-08; 655; 699-700. Union witness testimony established this, along with Company documents. Problems between employees and other in-store problems are also addressed by Store Managers primarily. T3 389; T2 222; T1 526-28; 655-58; 700-01.

The Union witnesses offered extensive testimony about the distant role District Managers have at the store. Each witness had seen their District Managers only a handful of times in a given year, or at all. T3 300-01; T3 345; T3 405; T2 229; T1 543-47; 614-16; 660-61; 701-02. The evidence demonstrated that District Managers have virtually no connection to store-level employees.

Regarding employee interchange, the Company introduced exhibits that purport to show various aspects of interchange. However, that evidence was fundamentally undermined by the testimony of the Union witnesses, who testified at length and in detail to establish that all instances of employees working at stores other than their home store are voluntary. T3 299-300; T3 343; T2 225; T1 538: 16-22; Tr. 613: 14-21; 706: 19 – 707: 19. In addition to these shift-level transfers being voluntary, it is clear that employees, not the Company, administer the vast majority of them. The workers use a series of group texts to do the voluntary shift coverage, which has no connection to Starbucks. The voluntary nature of interchange is also supported by Company documents

The Union introduced the weekly schedules of the store for the past two years into the record. Pet. Exs. 5-7; 105-107; 201. These schedules demonstrate the true functional extent of

employee interchange. As discussed in more detail below, the schedules reveal that the number of employees acting as “borrowed partners” on a consistent basis is extremely low.

The parties also introduced evidence regarding the other relevant factors in deciding an appropriate unit, including: geographical separation; plant integration and product integration; and extent of organizing, among others. Each is treated in detail below.

ARGUMENT & ANALYSIS

The NLRB has discretion to determine the appropriateness of bargaining units “in order to assure to employees the fullest freedom in exercising the rights guaranteed” by the NLRA. 29 U.S.C. § 159(b). Critically, there is no statutory requirement that the petitioned-for unit be “the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit: the Act requires only that the unit be ‘appropriate.’” *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (emphasis in original). “[T]he Board’s primary concern is to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment.” NLRB, 1950 ANNUAL REPORT 39 (1951).

In order to make this determination, the Board analyzes whether there is a “community of interest” amongst the employees in the proposed unit using a number of tests, including: (1) bargaining history in the industry and between the parties; (2) similarity of duties, skills, interests, and working conditions; (3) organizational structure of the company; and (4) the desires of the employees. *See NLRB v. Action Auto.*, 469 U.S. 490 (1985). The community of interest standard is the fundamental test to determine appropriate bargaining units in all situations and requires a detailed factual inquiry.

Here, a very strong community of interest is established because each of the three Starbucks stores at issue is a “plant unit,” which is specifically enumerated as an “appropriate” unit under §

9(b). 29 U.S.C. § 159(b). The issue the Company raised at the hearing is whether each Starbucks location is “effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *Hilander Foods*, 348 NLRB 1200, 1202 (2006). If so, then the Board can determine that single-store units are not appropriate and order an election for a larger multilocation unit, which is what the Company has requested.

A party arguing against a single-store unit has a “heavy burden,” and “must demonstrate integration so substantial as to negate the separate identity of the single store units.” *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). The record is clear that Starbucks will not meet its burden here.

The Board has applied its presumption that single-store units are appropriate in the retail context for many decades.² *Sav-On Drugs, Inc.*, 138 NLRB 1032 (1962). The Board considers

- (1) central control over daily operations and labor relations, including extent of local autonomy;
- (2) similarity of employee skills, functions, and working conditions;
- (3) degree of employee interchange
- (4) distance between locations; and
- (5) bargaining history, if any.

Hilander Foods, 348 NLRB 1200, 1202 (2006) (hereinafter “*Hilander*”) (internal citations omitted); *see also* NLRB Office of the General Counsel, AN OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES 161-64 (June 2017) (hereinafter “NLRB Outline”) (listing nine relevant considerations). This analysis supports the finding that single-store units are appropriate, and that the Company has failed to rebut that presumption.

This discussion goes through each of these relevant components. For the following reasons, the Union respectfully requests that the RD find single-store units are appropriate.

² For cases where the employer could not overcome presumption and the single store unit was upheld *see Frisch’s Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964); *Haag Drug Co.*, 169 NLRB 877 (1968); *Walgreen Co.*, 198 NLRB 1138 (1972); *Lipman’s, A Div. of Dayton-Hudson Corp.*, 227 NLRB 1436 (1977); *Bud’s Thrift-T-Wise*, 236 NLRB 1203 (1978); *Renzetti’s Mkt., Inc.*, 238 NLRB 174 (1978); *Eschenbach-Boysa Co.*, 268 NLRB 550 (1984); *Red Lobster*, 300 NLRB 908 (1990); *Hilander Foods*, 348 NLRB 1200 (2006).

I. STORE MANAGERS EXERCISE ALL MEANINGFUL AND RELEVANT CONTROL OF STORES' LABOR RELATIONS, OPERATIONS, AND SUPERVISION, SUPPORTING THE PRESUMPTION FOR SINGLE-STORE UNITS

Examination of three of the factors relevant under Board law – control over labor relations, autonomy, and supervision – involve mostly the same body of facts in the record. All three factors ultimately ask whether Store Managers exercise sufficient authority within the stores so that the presumption of a single-store unit remains appropriate. In this case, the record establishes that Store Managers exercise a very high degree of control over labor relations and supervision, meaning all three factors weigh in favor of the single-store unit presumption.

The role of Store Managers is summarized by Starbucks' own job description for the position, which states:

The store manager is required to regularly and customarily exercise discretion in managing the overall operation of the store. In particular, a majority of time is spent supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling), ensuring customer satisfaction and product quality, managing the store's financial performance, and managing safety and security within the store.

Pet Ex. 13. By contrast, the job description of District Managers, the position the Company appears to argue has the real authority, simply emphasizes a relationship with Store Managers, not store-level employees:

This job contributes to Starbucks success by **leading a team of store managers** within an assigned district to achieve business results while creating and maintaining the Starbucks Experience for our customers and partners. The district manager is required to regularly and customarily exercise discretion in managing the overall operation of the stores within the assigned district. **The majority of time is spent staffing, coaching, developing and managing the performance of store managers**, understanding local customer needs, ensuring district-wide customer satisfaction and product quality, analyzing key business indicators and trends, managing the district's financial performance, and managing safety and

security within the district. The incumbent is responsible for modeling and acting in accordance with Starbucks guiding principles.

Pet. Ex. 11 (emphasis added).

As described in more detail here, three of the nine factors that are relevant to the appropriate unit question – control over labor relations, autonomy, and supervision, are essentially answered by the same fact: Store Supervisors exercise the real control at Starbucks stores. These factors are discussed in turn here, since the same facts are relevant to them.

A. Control over labor relations rests in every meaningful way at the store level, since Store Managers exercise the relevant control over every major aspect of labor relations.

The Board has consistently analyzed the question of an appropriate unit by placing the most weight on consideration of managerial control, especially over labor relations. As such, the various aspects of this factor are examined in detail here.

The natural focus of the Board’s attention in analyzing control over labor relations is the role of any managers in the individual stores. In *Sav-On Drugs*, the Board cited “the substantial authority of the store manager” including “complete hiring authority with respect to part-time employees” and also the power to “interview applicants for full-time positions and hire them upon approval of the division manager” to support a single facility unit. *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962); *see also Hilander Foods*, 348 NLRB 1200, 1202 (2006).

It is appropriate to find control over labor relations supports the presumption of a single-store unit even when positions higher than the Store Managers have some role or control over management functions. For example, in *Eschenbach-Boysa Co.*, even though the owner of two supermarkets “reserves for himself many management prerogatives[,]” the Board found the employer had not rebutted the presumption because the managers at the two facilities “interview and hire employees, grant time off, and resolve employee problems and complaints.” *Eschenbach-*

Boysa Co., 268 NLRB 550, 551 (1984). In *Bud's Thrift-T-Wise*, the Board upheld a single unit because "the individual store managers exercise considerable authority in personnel matters[.]" and even though "the Employer's president establishes labor relations policies and employee benefits, the record discloses that the individual store managers also have and exercise substantial authority and play a direct role in the implementation of labor relations policies affecting the employees in their respective stores." *Id.* The Board was

persuaded by the facts that store managers interview prospective employees for hire and either directly hire part-time employees or make effective recommendations with respect thereto; that they have and exercise the authority to discharge employees or effectively recommend such actions; and that they may suspend employees for disciplinary reasons, grant time off, schedule employee shifts, vacations, and overtime, adjust employee grievances, evaluate employees for purposes of wage increases, participate in the determination as to the promotion of employees from part-time to full-time status, and advise the Employer concerning staffing needs which may involve employee transfers.

Bud's Thrift-T-Wise, 236 NLRB 1203, 1204 (1978).

In *Red Lobster*, the Board determined a single location unit was appropriate, again despite some control and participation by managers that ranked above the store-level managers. The Board described the respective roles of the in-store manager and the manager above that position, finding, as here, that they exercised control over most aspects of labor relations. *Red Lobster*, 300 NLRB 908, 911 (1990).

The Board summarized the significance of this consideration in *Renzetti Market*, where it upheld a single facility unit because

matters which are of the keenest interest to the employees are handled within the store, and the employees know that in most instances the store management does not have to venture outside of the store for approval of its decisions. Judged against the criteria set forth above, it is apparent that the immediate supervision and day-to-day concerns at Store No. 1 are separate and autonomous from those at Store No. 2.

Renzetti's Mkt., Inc., 238 NLRB 174, 176 (1978).

At the hearing, the Union's witnesses testified at length about which Starbucks employees are responsible for the components of labor relations described in the authority above. Ms. Harrison, the previous Store Manager at the Power & Baseline store, reiterated the Shift Supervisors' testimony. In addition to the witness testimony on these points, the Company's own written policies provide ample ground for finding that Store Managers exercise sufficient control over labor relations to prevent the Company from rebutting the presumption. In describing the role of a Store Manager, the Company's Partner Guide – which appears to combine all relevant labor policies in one document – states:

Store manager: The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. **The store manager is responsible for personnel decisions, scheduling, payroll** and fiscal decisions. A store manager is considered full-time and is generally scheduled to work at least 40 hours each week.

Er. Ex. 13 at 15 (emphasis added). Such a description is obviously relevant to several of the components of control over labor relations described below. Each section below also incorporates other relevant sections of the Partner Guide. These reiterate the inescapable conclusion that Store Managers are the Starbucks representatives exercising the vast majority of meaningful control over labor relations, making it impossible for Starbucks to rebut the presumption that single-store units are appropriate.

1. Hiring

The Union witnesses testified consistently and in detail about the significant and extensive role Store Managers have in hiring new employees at the store. Store Managers review

applications, interview applicants on their own, access the computer system where applications are stored and organized, speak to applicants on the phone about their applications. None of the witnesses had ever seen anyone other than a Store Manager performing any of these functions, with the possible exception of a Barista or Assistant Store Manager asked to sit in on an interview on occasion. T3 284-85; T3 365-66; T2 211; T1 500 – 503; 592-600; 688-93. Brittany Harrison testified that in her role as a Store Manager at several Starbucks stores, including Power & Baseline, she was always responsible for interviewing and hiring new employees. T3 365-66. Contrary to the testimony of Employer witnesses, none of the Union witnesses had ever seen two Store Managers, a District Manager, or a recruiter performing interviews. *E.g.*, T3 285-86; T2 211; T1 502. The witnesses also never saw any indication that anyone other than a Store Manager or Assistant Store Manager was involved in the hiring of workers in the stores. As Ms. Harrison testified: “In my entire experience at Starbucks, I have not had a district manager who needed to be in the process of hiring.” T3 366. In short, every indication is that the Store Managers are the Starbucks representatives responsible for hiring new employees at the store.

The Partner Guide makes clear that Store Managers are to be the point of contact if a partner decides to leave a store: “If at all possible, **a partner should provide two weeks’ notice to the manager** if choosing to resign from employment with Starbucks. [...] **A partner must return all company property to the manager on or before the last day of work.** Er. Ex. 13 at 74 (emphasis added). Finally, the Company’s job description of the Store Manager position states Store Managers are responsible for hiring. Pet. Ex. 13.

On the subject of interviews of applicants, the Company introduced exhibits which show guidelines for how Store Managers should conduct the interviews in question. The exhibit showing interview guidelines when Store Managers are hiring Baristas emphasizes a great deal of

agency on the part of the Store Managers conducting the interviews, contrary to the generalized testimony of the Company witnesses on this point. The document contains numerous references to the fact that the Store Manager should use their own experience and authority to carry out the interview, including instructions to: “share your experience, and build a connection with the candidate. Offer the candidate a beverage or share a coffee press of your favorite coffee and describe what makes it your favorite!”, to “Discuss the Starbucks Experience with the candidate. Share how creating Best Moments come to life in your store[,]” and to “Describe a day in the life of a Barista.” Er. Ex. 10 at 1. The Company exhibit for interviewing Shift Supervisors has parallel language throughout, and the same points apply to this. Er. Ex. 11. Beyond this, and perhaps most importantly, the witnesses at the hearing testified clearly that the Store Managers are not required to ask each and every question in this document, and do not in fact ask all of them.

2. Termination and discipline

The Company’s job description explicitly states that Store Managers are responsible for discipline and termination. Pet. Ex. 13. In addition, the Union witnesses testified consistently and in detail about the role of Store Managers in terminating employees and giving other forms of discipline. T3 286-87; T3 367-71; T2 212-14; T1 503-07; 600-02; 648-51; 693-95. Ms. Harrison was clear that as a Store Manager she never had a District Manager involved in the separation of an employee and that she did not need approval to separate an employee. T3 369-70. Each had witnessed conversation between Store Managers and individual workers who were being terminated. Each witness had also seen or been the recipient of numerous instances of lesser forms of discipline in the stores, all of which were administered by the Store Managers. As they testified, Store Managers, and no one else, routinely speak to employees about corrections to the way they

perform work, or about other issues that need improvement or correction. On occasions when an employee receives a corrective action form, it has always been Store Managers who go through the form with employees, give them a copy of the form, and sign on behalf of Starbucks.

In addition, the Partner Guide has numerous sections regarding the role of Store Managers in monitoring and addressing problems with employees in the store. Er. Ex. 13 at 29-30; 32-34; 40; 42. The Corrective Action Form itself also gives clear indications of the role of Store Managers in administering discipline and exercising real decision-making power. At the bottom of the form, it states: “Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file.” Er. Ex. 18. Most importantly, there is nothing on the form which mentions the District Manager, and there is no space for a District Manager’s approval. *See id.* The document also states: “Partner: The above has been discussed with me by my manager.” *Id.* The form also gives guidance about the appropriate representative to address questions with corrective action: “If you disagree or have any concerns about this corrective action, you are encouraged to talk it over with the manager who is delivering it to you.” *Id.*

Regarding the use of the Virtual Coach tool, the Union witnesses consistently testified that they have never seen their Store Managers using the tool, and in fact were not even aware of its existence before the hearing. T3 313-14; T2 214. As Ms. Harrison testified: “the virtual coach is a newer tool” and “the couple times that I’ve used it was when we were training on how to use the tool.” T3 373-74.

Even more importantly, the Virtual Coach document in the record makes clear that “[t]he Partner Relations Virtual Coach is intended to complement, not replace, your active assessment and judgment” Er. Ex. 22. In other words, it is a tool, rather than a binding set of all-encompassing policies, as the Company appears to argue.

The Notice of Separation form also highlights that Store Managers are the representatives responsible for dealing with fundamental staffing issues, and not someone higher than them. The entire form is to be filled out by Store Managers (marked as “Manager” in this and other exhibits). Er. Ex. 29. At the bottom, there is a signature line for the Store Manager, a witness, and the partner, and it contains instructions for Store Managers: “Manager: Print two copies of this form. Give one signed copy to the partner and retain one signed copy in the store partner file.” *Id.* Nothing in the form indicates that a District Manager is involved in a separation whatsoever.

In short, it is clear on the record that Store Managers exercise all the meaningful control over termination and discipline of store-level employees.

3. Orientation

Again, the Union witnesses testified consistently on this point that Store Managers have always been the Company representatives responsible for orienting new employees – what Starbucks calls a “first sip.” T3 288; T3 375-76; T2 215; T1 507-08; 602-03; 651; 695. Ms. Harrison testified about walking through the First Sip orientation with a new hire. T3 376. Store Managers meet with the newly hired employees and do a combination of administrative work and orientation. The witnesses were clear that nobody other than a Store Manager has carried out this work, with the only exceptions being times when a Store Manager was not available and assigned another store-level employee to perform some part of the orientation. T3 376; T2 215; T1 602.

4. Training

The Barista Basics Training Plan document makes clear that Store Managers are involved in the training protocols for each new employee, and that nobody above the level of Store

Managers carries out these duties. For example, the document states: “Your manager and barista trainer will help you along with way. . . Your manager will explain the order of your training plan. “ Er. Ex. 14 at 1. Furthermore, the sections of the document called “Your Role as a Barista”, which comes first after the First Sip and Compliance Training, and the “Next Chapter” block, which comes last, both have signature lines that explicitly state “Store Manager.” *Id.* While Barista Trainers are responsible for the bulk of training in the stores, to the extent any management representative participates, it is the Store Manager and no one else.

5. Promotions

The testimony at the hearing was clear that Store Managers are responsible for the promotion of employees who are already in a store to a higher position. The Union witnesses testified consistently that Store Managers routinely pick out employees eligible for promotion, work out a plan for such a promotion, approve the promotions themselves, and then inform the employees of the promotions. T3 289; T3 377-78; T2 216; T1 509-11; 603-04; 695-97. Ms. Harrison testified about the steps involved in promoting a Barista to a Barista Trainer and to other promotions of hourly employees. T3 377. The witnesses have seen this process happen with other employees and have experienced it themselves with their own promotions. Again, the witnesses have never seen any indication that someone other than a Store Manager has any role in the promotion process, and their own Store Managers have been the representatives carrying out the relevant aspects of promotions. T3 289; T2 216; T1 643; 651-53.

The Partner Guide is explicit in stating that Store Managers are the ones responsible for making decisions and determining the structure of partner promotions. Er. Ex. 13 at 49. It also

confirms the testimony of the Union witnesses in its references to partner development as a whole, directing partners to speak with their managers about the promotion process at every turn. Er. Ex. 13 at 48-49. The Company's job description for Store Managers also states that they are responsible duties include: "Monitors and manages store staffing levels to ensure partner development and talent acquisition to achieve and maintain store operational requirements" and "Providing partners with coaching, feedback, and developmental opportunities and building effective teams." Pet. Ex. 13.

6. Permanent Transfers

The record is clear that Store Managers are primarily responsible for administering the transfer of a partner from one store to another. As Ms. Eisen testified in the first hearing, when she permanently transferred between stores, which she did several times, she spoke directly with the Store Manager of the store to which she wanted to transfer. T1 532. If that Store Manager agrees to consider taking on the employee, the employee speaks to their current Store Manager, and the Store Manager facilitates the transfer. T1 532-33. As Ms. Eisen described it, there was no indication a District Manager was involved in the process. T1 534. Ms. Harrison confirmed that permanent transfers are primarily handled by the incoming and outgoing Store Managers, with only final administrative from the incoming and outgoing District Managers. T3 395-96. Starbucks' own documents confirm this process. The transfer request form in the record is clearly filled out by the Store Manager and is simply signed by the District Manager at some point at the end of the process. Er. Ex. 30. There does not appear to be a dispute regarding these facts.

7. Scheduling, time tracking, payroll, and staffing

As the store-level employees testified at the hearing, Store Managers are also the ones responsible for doing all meaningful tasks associated with scheduling employees, and for administering the time tracking system. T3 378-86; T2 216-21; T1 511-14; 604-06; 653-54; 697-98. As they testified, Store Managers usually make adjustments and edits to schedules every Monday, when they have a so-called administrative day working in their office spaces. During this time, the Store Managers make adjustments to schedules based on employees' time off requests or other changes to a regular schedule, which involves them asking individual employees about their availability to move around certain shifts. Shift Supervisors are not able to make changes to schedules. T3 379-80; T2 216-21; T1 605. The Store Managers also go through the hand-written record of time tracking, and adjust employees' times for punching in and out, in order to make sure all their time worked is properly recorded. T3 381-86l; T2 216-21; T1 513:24. Store Managers also administer the payroll. *Id.* Ms. Harrison testified extensively about the exclusive role of Store Manager's with regard to scheduling, time tracking and staffing Starbucks stores. T3 378-86. Again, the Union witnesses were clear that they have consistently witnessed Store Managers performing these tasks, have never seen anyone else doing them, and have seen no indication that anyone else is involved in these processes in a significant way.

The Company's job description states that Store Managers are responsible for making staffing decisions, including scheduling. Pet. Ex. 13. In addition, the Partner Guide contains several relevant references to work hours and schedules, describing the Store Manager as the one responsible for scheduling. Er. Ex. 13 at 17. These references corroborate the Union witnesses' testimony on the significant and exclusive role of Store Managers in scheduling.

The Partner Availability Form explicitly directs partners to communicate with Store Managers regarding scheduling and reiterates that Store Managers are indeed the ones doing

scheduling: “Partner: Please return this form and discuss with your store manager upon completion. Your store manager will use this information as well as the business needs of the store to build a schedule that balances both.” Er. Ex. 4. Furthermore, the form requires a Store Manager’s signature, and no other Starbucks representative. *Id.*

Similarly, the Partner Guide is clear about Store Managers’ roles in correcting time records and verifying store-level employees’ hours worked. Er. Ex. 13 at 19-20. The Partner Guide has several other references to Store Managers’ role in communicating with store-level employees on other pay-related issues. Er. Ex. 13 at 22-23. Once again, this evidence corroborates the reinforces the Union witnesses’ testimony, and undermines the testimony of Company witnesses who testified otherwise. In fact, these details do not appear to be in dispute

8. Approval of time off

Store Managers are responsible for approving time off requests by Baristas and Shift Supervisors, as the Union witnesses confirmed in detail. T3 386-87; T2 279-80; T1 514-23; 606-07; 654-55; 698-99. Ms. Harrison testified about the exclusive role of Store Managers in approving time off requests and the factors that go into granting or denying such requests. T3 387. When a store-level employee requests time off with more than three weeks’ notice, they are able to do so in the Partner Hours app, and their request can be approved through that app. As Ms. Eisen’s testimony made clear in the first hearing, Store Managers are the ones who approve time off requests made through the app. As she described it, she recently made such a request, and was able to view a notification in the app that the request had been granted. *See* Pet. Ex. 1. As is obvious from what is visible in the app and from Ms. Eisen’s testimony, the entry lists the Store Manager as the person who approves a time off request. The request approval states: “By: Patty

Shanley [Store Manager at the Elmwood location]; Status & Time: Approved & 03/29/2021 7:34 AM.” *Id.* Below this entry is the entry from when Ms. Eisen first made the request. *Id.* Contrary to the Company’s implication in cross-examining Ms. Eisen, there is no reasonable conclusion to draw but that the Store Manager is the one approving the request.

In cases where employees make a request for time off with less than three weeks’ notice, employees make a request directly to their Store Manager. As Ms. Eisen testified in the first hearing, she recently had to make such a request, and her Store Manager approved the request, and simply asked for a follow-up text from Ms. Eisen to reflect this. T1 523; Pet. Ex. 2. Ms. Krempa confirmed this in the second hearing. T2 279-81. Ms. Harrison explained how she would make scheduling changes in response to last minute time off requests. T3 378-80. In short, although this situation involved a different mechanical process, the fact remained that the Store Manager was the only person with the responsibility of approving time off.

In addition, the Partner Guide again echoes the testimony of the Union witnesses regarding the role of Store Managers, stating: “The store manager posts weekly work schedules in advance so partners can plan ahead. For this reason, a partner should submit a request for planned time off from work to the store manager for approval as far in advance as possible.” Er. Ex. 13 at 17. It goes on to describe the role of Store Managers in other partner time off or absences, reiterating that they are the ones responsible for this at the store level. Er. Ex. 13 at 53; 57-59.

9. Evaluations

To the extent Starbucks performs employee evaluations, those are done only by Store Managers. As the Union witnesses testified, Store Managers regularly have so-called “one-on-one” meetings with store-level employees, also known as or partner development conversations

(“PDC”) , where they discuss their work performance and areas of potential improvement. T3 387-88; T2 220-21; T1 523-261 607-08; 655; 699-700. Ms. Harrison testified about going through PDCs with employees in her store. T3 387-88. Store Managers are the only ones who have carried out these evaluation meetings with employees, and there is no indication any other Starbucks representative is involved in the process. Store Managers themselves are the only ones with the ability to schedule such designated time in employees’ work schedules.

Again, the Partner Guide confirmed the Union witnesses’ testimony on this point: “In addition to ongoing coaching, each partner will have at least two formal 1:1 Performance and Development Conversations with the manager each year.” Er. Ex. 13 at 49. The Company’s job description for Store Managers reiterates this, saying their duties include: “Actively manages store partners by regularly conducting performance assessments, providing feedback, and setting challenging goals to improve partner performance. Manages ongoing partner performance using performance management tools to support organizational objectives.” Pet. Ex. 13.

10. Resolution of employee grievances, complaints, and related issues

Store Managers are also the Starbucks representatives responsible for adjusting employee grievances and dealing with interpersonal conflicts. T3 389; T2 222-23; T1 526-28; 655-58; 700-01. As the Union witnesses testified, they have seen and been involved in numerous instances where there was a need to report a problem regarding another employee or to address some other issue. While a Barista might first speak to a Shift Supervisor, if the issue involved a Shift Supervisor, or the employee reporting a problem was a Shift Supervisor themselves, they reported problems to Store Managers. Again, the witnesses consistently testified that only Store Managers

were involved in addressing problems and implementing corrective actions necessitated by employee complaints.

In the first hearing, Ms. Lerczak testified that, while she almost always brought problems to her Store Manager, there was one instance where she did not. That time, she called Partner Resources about a harassment issue, but the Partner Resources hotline directed her to speak *to her Store Manager* about the issue. T1 656-658. Once she did this, the Store Manager reported that the issue would be addressed. T1 658. Ms. Cohen testified in the second hearing to an incident where she had a disagreement with another partner, and when the partner did not respond to her directive as a Shift Supervisor, she brought the issue to the Store Manager. T2 222. Ms. Harrison testified in this hearing that she “often” dealt with conflicts between two or more partners in her store. T3 389.

The Partner Guide speaks extensively to the role Store Managers should officially play in these processes, saying in numerous ways that partners should approach Store Managers with various sorts of problems. *See* Er. Ex. 13 at 26; 28. The Partner Guide also speaks specifically to the subject of how conflicts between partners should be addressed, further reinforcing the testimony of the Union witnesses:

If a partner experiences a disagreement or conflict with another partner, the partner should first discuss the problem with the other partner and make every effort to resolve it in a respectful manner. If unsuccessful, **the partner should seek manager assistance in resolving the matter respectfully and professionally.**
[...]

Er. Ex. 13 at 45-46 (emphasis added).

11. Other evidence of Store Managers’ role in labor relations

There should be no dispute on the record that Store Managers are the representatives responsible for overseeing, supervising, and directing store-level employees, since this theme runs throughout the testimony of the Union witnesses and many of the Company documents in the record. In particular, the Partner Guide refers in various ways to the role of Store Managers as the ones on the ground who implement company-wide policies and who are responsible for engaging with employees in the store regarding the various subjects of labor relations:

The information that follows presents general policies and standards that are important for partners to understand immediately upon their employment with Starbucks. **To review and learn more about other Company policies, standards and procedures, please talk to your manager.**

A partner who is experiencing symptoms such as vomiting, diarrhea, jaundice, sore throat with fever, or a medically diagnosed communicable disease **must notify the manager. The manager will determine whether work restrictions apply.** [...]

The partner should check with the store manager on apron standards and guidelines, such as names on aprons. [...]

For full details or questions about this policy, refer to the Global Gifts and Entertainment Standard in the Enterprise Policy Library on the Partner Hub, **talk to your manager** or contact the Ethics & Compliance Helpline at (800) 611-7792 or Starbucks.com/helpline. [...]

For more details on creating the Starbucks Experience for customers with disabilities, including more information on service animals, a partner should consult the Store Operations Manual or **discuss with the manager.** [...]

If a partner is unsure whether there is a legitimate business reason to share private, confidential, internal or proprietary information, **the partner should contact the manager**, the Partner Resources Support Center (PRSC) at (888) SBUX411 (728-9411), or the Ethics & Compliance Helpline at (800) 611-7792 or Starbucks.com/helpline. [...]

Partners may review their personnel records at reasonable intervals by contacting the manager. The partner **may discuss concerns about the contents of the file with the manager**, next-level manager or the Partner Resources Support Center at (888) SBUX411 (728-9411).

Er. Ex. 13 at 29-30; 34; 36; 41; 43 (emphasis added).

On the subject of partners' communication with Store Managers or other Starbucks representatives, the Partner Guide is clear, stating numerous times that there must be clear and authoritative communication between them. *See* Er. Ex. 13 at 45. The same document speaks to issues regarding a safe work environment and the reporting of certain events, again emphasizing that all reports must go to Store Managers. Er. Ex. 13 at 51-52.

Finally, the Company's own job description of the Store Manager role and duties should remove all doubt about the general role of Store Managers with respect to their relationship with store-level employees, and their role in labor relations. Pet Ex. 13.

12. The role of District Managers

It is clear from the evidence described above that Store Managers exercise an exclusive, or at least a sufficiently significant, role in labor relations to satisfy the Board law on point. However, the Union witnesses also testified explicitly about their direct experience with District Managers in the stores. Again, since the three Union witnesses were the only ones to testify at the hearing who have personal knowledge of what has happened in the Power & Baseline store before the union campaign went public, their testimony on this point carries more weight than that of the Company witnesses who were only able to speak vaguely about expectations and guidelines regarding District Managers' roles, and changes in that role since the union campaign went public.

The witnesses were clear and consistent in saying that District Managers play a negligible role in the operation of the stores, and in particular in the areas of labor relations above. T3 300-01; T3 345; T3 405; T2 287-88; T1 543-47; 614-16; 660-61; 701-02. The witnesses saw District Managers on a relatively consistent basis – from less than once an annual quarter to approximately once a month at the most frequent. They appeared to come to the stores for launches or to speak

with the Store Manager about the Store Manager's performance. The District Managers interacted with the Baristas and Shift Supervisors very rarely, and only for very brief interactions. Their infrequent visits to the stores were relatively short, usually lasting for no more than two hours.

In addition, Ms. Harrison testified at length about her interactions with District Managers regarding all the aspects of labor relations described above. She also testified about the role of District Managers and how frequently she communicated with the DM in the Mesa district. *See* T3 399-407. As Ms. Harrison described, the District Manager came to the store infrequently. While they were in contact, some of that contact was actually regarding personal matters, not the store's operations. Furthermore, Ms. Harrison testified in detail about the fact that she did not need the District Manager's approval for the labor relations duties discussed above.

In the first case's hearing, Ms. Lerczak testified that the one time she attempted to contact a District Manager about an issue, she was actually rebuked for doing so afterwards. As she testified, when she was not able to speak to a Store Manager about closing a store due to weather, she called the District Manager. T1 661. Later, her Store Manager directed her never to contact the District Manager again. *Id.*

In other words, the Union witnesses' testimony flatly contradicted the picture the Company witnesses attempted to paint in describing the supposed expectations that District Managers be intimately involved in store operations and labor relations. It should be noted that one Company witness, even in describing the expectations of Corporate regarding District Managers, testified they were expected to visit a store once every ten (10) days. MK, a District Manager reassigned to Buffalo after the union campaign went public, testified that "I would say on average, I see each store within two week[s] time." T2 28; *see also* T3 54 (Employer witness Andrea Streedain testified "I would say in terms of physical presence, a minimum of once every two weeks"). While

this testimony was obviously undermined by the Union witnesses, it is worth noting because even this frequency would not be enough to show District Managers were sufficiently involved to make a multilocation bargaining unit appropriate. In any case, the most direct evidence on this question removed all doubt that District Managers have virtually no direct contact with hourly partners and cannot exercise the degree of control over the stores' operations and labor relations at the stores to rebut the presumption of single-store units.

The Company's job description for District Managers reiterates the very limited role they have in the daily operations of the stores, and thus their role in labor relations. The job description repeatedly emphasizes that District Managers have a working relationship with Store Managers, but not any other partners within the stores. *See* Pet. Ex. 11. The duties listed in the job description include:

- **Builds store manager capability** to coach, develop and manage the performance of their direct reports.
- **Leads a team of store managers** to deliver legendary customer and partner experiences. Spends majority of time in stores observing store environments and operational effectiveness, coaching and developing store managers to achieve business goals. [...]
- Sets clear expectations, delegates and communicates key responsibilities and practices **to store managers** to ensure smooth flow of operations within the district. [...]
- Monitors and manages district-wide management staffing levels. **Ensures store manager talent acquisition** and development in order to achieve and maintain district operational requirements.
- Utilizes existing tools to identify and prioritize communications and filters communications **to store managers** within the district. Communicates clearly, concisely and accurately in order to ensure effective operations at the store and district level.

Id. (emphasis added).

In short, the job description itself corroborates and highlights the ground-level testimony of the Union witnesses. District Managers do not have any meaningful role in labor relations at the store.

* * *

For all the reasons above, it is clear on the record that the key factor of control over labor relations weighs heavily in favor of a finding that a single-store unit is appropriate. The dispute ultimately concerns the respective roles of Store Managers and District Managers, as well as the theoretical role of corporate-level policies, upon which the Company will rely. Regarding all the metrics above, which constitute all the core responsibilities and roles of management and labor relations specifically, Store Managers exercise a significant or exclusive role. District Managers, by contrast are virtually absent from the stores, and could not possibly be exercising the type of control necessary for the Company to overcome the evidence discussed above. Therefore, the Company cannot rebut the presumption that a single-store unit is appropriate.

B. Starbucks Stores Operate with Significant Autonomy Because Store Managers Exercise Considerable Control Over Labor Relations, Ordering, Scheduling, Staffing, and Operations.

Autonomy of individual stores is an important factor in the appropriate unit analysis. Local autonomy includes control over labor relations, ordering, advertising, recordkeeping, and lack of functional integration. *See Bud's Thrift-T-Wise*, 236 NLRB at 1204; *Eschenbach-Boysa Co.*, 268 NLRB at 551; *Point Pleasant Foodland*, 269 NLRB 353, 354 (1984); *Hilander Foods*, 348 NLRB at 1202. Autonomy is established by who is making the “day-to-day” decisions at each store. *See Hilander Foods*, 348 NLRB 1200, 1202 (2006) (“the Employer's facilities have strong local autonomy [...] the record shows that the day-to-day decisions at Roscoe and each other facility are handled, in large part, separately within each store by the store manager”). The most important factor to establish local autonomy is control over labor relations. *See UPS Ground Freight, Inc.*

v. NLRB, 921 F.3d 251, 254 (D.C. Cir. 2019) (“the Acting Regional Director reasonably relied on the significant evidence of local autonomy over labor relations matters”).

Starbucks Store Managers exercise exclusive or substantial authority in all meaningful labor relations matters, including hiring, firing, discipline, on-boarding, training, promotions, scheduling, payroll, time-off requests, transfers, evaluations, and handling employee grievances. *See supra* Section I.A. The extent of Store Manager control over personnel alone is enough to establish local autonomy of individual stores. *See Bud’s Thrift-T-Wise*, 236 NLRB at 1204 (“With regard to local autonomy, we find that the individual store managers exercise considerable authority in personnel matters.”); *UPS Ground Freight, Inc. v. NLRB*, 921 F.3d at 254.

First, Store Managers are responsible for maintaining adequate staffing and are ultimately in charge of individual work assignments. *Er. Ex. 13* at 15 (“The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors and baristas. The store manager is responsible for personnel decisions, scheduling, payroll and fiscal decisions.”). In addition to the control of weekly schedules and scheduling adjustments outlined in Section I.A., T3 378-86; T2 216-221; T1 511-14; 604-06; 653-54; 697-98, Store Managers have final authority over where each worker is stationed for a given shift. As worker testimony reveals, the “Play Caller” for a given shift, which is the designated worker who sets assignments, is either a shift supervisor or store manager. T3 385-86; T2 216-221; T1 549; 711. All daily assignments are established at the store level.

Second, Store Managers are responsible for ordering and inventory. Shift Supervisors often assist Store Managers with ordering, but it is ultimately the Store Manager’s responsibility. T3 390-91; T2 224; T1 703-705 (“Our store manager, David Fiscus, sat all the shift supervisors down and said, ‘Listen, I’m going to take over the accounting, fixing the orders. I’m going to be

placing the orders from now on because we just have too much stuff in the store.”); T1 637-38. The Company’s electronic inventory system “suggests” amounts of products to order, but it is ultimately the responsibility of the Store Manager to make final orders and to keep track of inventory. *Id.*; T2 222; T3 390-91.

Third, Store Managers are responsible for maintaining personnel and business records at the store. Each store has a file cabinet, and it is the Store Manager’s responsibility to keep and maintain personnel records and to answer any questions about them. *See* Er. Ex. 15 at 43. The Store Manager is also responsible for all timekeeping and payroll records. *Id.* at 19-20.

Finally, the Company’s Partner Guide clearly states that employees should call Store Managers, even when they are not at the store, to address any problems. *Id.* at 45 (“Partners who need to contact the manager during non-working hours should call the manager to talk directly”). The Company clearly relies on Store Managers to handle the bulk of day-to-day decision-making and responsibility at the store-level.

C. Store Managers are the Highest Level of Authority That Routinely Supervise Starbucks Stores.

Supervision is another related factor, but it is distinct from control of labor relations and local store autonomy. *See Renzetti’s Mkt., Inc.*, 238 NLRB at 176 (“The Employer’s argument misses the mark for it is the separate supervision at each of the stores, not the independence of the local store manager, which underscores our analysis.”). In a retail chain operation, localized supervision supports single-store units. *See id.*; *Red Lobster*, 300 NLRB at 912. If management above the store-level does not routinely visit and directly supervise employees at individual stores, it implies the autonomy of the store, and thus the appropriateness of individual units. *Renzetti’s Mkt., Inc.*, 238 NLRB at 176.

In *Red Lobster*, the Board determined that an area supervisor spending one day per week at individual stores did not constitute substantial supervision under the law. *Red Lobster*, 300 NLRB at 912 (finding inadequate supervision where “[a]rea supervisors are present in each of the restaurants on average about once each week, typically for the full day. When not present, the area supervisor maintains daily telephonic communication with each of the restaurants to which he is assigned.”). Here, a Company witness claimed that District Managers should visit each store in their district approximately once every ten business days – a frequency that would not satisfy the authority above, even if it were accurate. T1. 212. Worker testimony reveals that District Managers visit much less frequently than claimed by the company, usually about once a quarter. T3 300-01; T3 345; T3 405; T2 287-88; T1 543-47; 614-616; 660-61; 701-02.

While the Company has not established how frequently District Managers communicate with Store Managers, it is irrelevant under the law to establish store supervision. *See Red Lobster*, 300 NLRB at 912; *Renzetti’s Mkt., Inc.*, 238 NLRB at 175 (“what is most relevant is whether or not the employees at the sought store perform their day-to-day work under the immediate supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.”). The fact that District Managers exercise minimal immediate supervision over the day-to-day operations of individual stores reinforces that single-store units are appropriate, and that Company cannot rebut this presumption on the record.

II. THE TYPE AND DEGREE OF EMPLOYEE INTERCHANGE FAVORS A SINGLE-STORE UNIT

Employee interchange is an important factor in the appropriate unit analysis. It is part of a larger determination of whether there is “functional integration of a sufficient degree to obliterate

separate identity” between stores. *Haag Drug Co.*, 169 NLRB 877, 877 (1968); *see Cargill, Inc.*, 336 NLRB 1114, 1114 (2001). An occasional covered shift or holiday coverage will not suffice; rather, only “substantial employee interchange destructive of homogeneity” will contribute to overcome the presumption. *Id.* at 878. The Board also distinguishes between voluntary and involuntary interchange and accords less weight to permanent than temporary transfers. *See Red Lobster*, 300 NLRB 908, 911 (1990) (“we find that the degree of employee interchange is minimal, and the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary” [...] Permanent transfers [are] a less significant indication of actual interchange than temporary transfers.”). Here, the Company has not and cannot establish a single involuntary transfer over the past two years, and the amount of employee interchange at the store does not destroy homogeneity in the unit.

The Company’s evidence does not establish significant employee interchange at the store. First, the Company has not presented any evidence of involuntary transfer. Every “borrowed” shift has been completely voluntary. This simple fact diminishes the argument that such interchange should overcome the appropriateness of single-store units. Employees are in control of where they work, so under Board law they should be allowed to form and bargain in separate units if they desire. Second, the Company’s evidence of “borrowed” partners does not rise to the level of “substantial employee interchange destructive of homogeneity” under the law.

A. All Employee Interchange at Starbucks is Voluntary.

The Company’s data on employee interchange is diminished by the fact that it has not and cannot present one instance of involuntary transfer at the store in the relevant time period. For the appropriate unit analysis, “interchange is diminished [when] the interchange occurs largely as a

matter of employee convenience, i.e., it is voluntary.” *Red Lobster*, 300 NLRB at 911; *see also Hilander Foods*, 348 NLRB 1200, 1202-03 (2006) (finding interchange insignificant because “[s]ome transfers were at the request of the employee, not the Employer”). This is intuitive under the law, because it does not make sense to restrict workers from exercising their Section 7 rights to organize store-level units when those same workers are in control of where they go in the units. Here, the Company has not presented any evidence of involuntary interchange at the Power & Baseline store, while the record clearly establishes all interchange at Starbucks is completely voluntary.

Starbucks relies on notions of “culture” and broad statements regarding “expectations” to demonstrate that workers are required to work shifts at other stores without presenting any evidence of actual involuntary interchange. *See* T1 751-755. When pressed on how this culture and expectation of interchange is enforced, the Company admitted there are no negative repercussions if an employee refuses to work at another store. T1 755. Worker testimony confirms there are no negative consequences for refusing to work at another store. T3 299-300; T3 343; T2 225; 286; 341; T1 538; 613; 706-07. Liz Alanna, Michelle Hejduk, Rachel Cohen, Angel Krempa, Colin Cochran, Michelle Eisen, Danka Dragic, and Gianna Reeve all testified that there is no discipline for refusing to work in another store. *Id.* Gianna Reeve mentioned how she took a permanent transfer from the McKinley Road location to the new Camp Road location because “it’s closer to [her] house” and is more convenient. T1 708: 9-19. The testimony establishes that all interchange, including permanent and temporary transfers, at Starbucks is completely voluntary and based on employee convenience.

In addition to testimony, the Company’s own documents reveal that interchange is voluntary. The Company’s “Partner Availability” document states “You *could* also be *asked* to

work at another location” Er. Ex. 4 (emphasis added). There is nothing in any of the Company’s documents to indicate that working at other locations is required. As Regional Manager Deanna Pusatier testified, “we don’t really need to use that type of [mandatory] terminology” because “we have an incredibly flexible part-time workforce, and so we are able to find partners to work as the business requires.” T1 751: 13-19. Because of its flexible and mostly young part-time workforce, the Company does not need to require workers to transfer to different stores. There will always be enough workers to volunteer if the need arises.

In addition, the record is clear that interchange is driven and coordinated by workers in the majority of instances. Workers have created both store-level, Buffalo-area, and Mesa-area GroupMe chats (a texting platform) to seek coverage for shifts. T3 299; T2 225; T1 535-36. The workers did this to stay in touch during the Covid-19 Pandemic and the Company has not sanctioned or exercised any control over it. *Id.*; T1 540:22 – 541:5. It “is pretty widely used,” T1 536: 15-19, and Liz Alanna, Michelle Eisen, Caroline Lerczak, and Gianna Reeve testified that they have used the GroupMe chats to cover shifts. T3 299; T1 541: 16-21; T1 658: 7 – 659: 3; T1 705: 8-20. Also, each one of the workers testified that in the event they wanted to find coverage for a shift, they would first use their store-level GroupMe chat to seek coverage, and then go to the regional GroupMe chat second. *Id.*; T2 340. The record is clear that employee interchange is not only voluntary at Starbucks, and it is in fact administered by the workers themselves.

It is undisputed that workers are not required to work outside of their home stores. The only time a worker is required to work at another store is after they are asked, they agree to work there, and they are put on the schedule. T1 752: 13-16. Since the RC Petitions were filed nationally, the employer has apparently changed its practices, closing down stores and scheduling

workers at other locations. T3 37; T2 97; T1 756: 4-21.³ This is irrelevant to determine whether a single-store unit is appropriate in this case. The Company has not and cannot produce any evidence that it requires its employees to work at multiple locations, and the record is clear that all interchange is voluntary and worker driven. Therefore, any evidence of employee interchange is diminished under the law.

B. The Degree of Interchange at the Petitioned-For Store Is Not Destructive of Homogeneity Within the Unit.

The voluntary interchange of workers at the store is not significant enough to overcome the homogeneity of the workforce in the store. In order for employee interchange to overcome the single-facility presumption, it must be “substantial” and “destructive of homogeneity” in a petitioned-for unit. *Haag Drug Co.*, 169 NLRB at 878; *see Cargill, Inc.*, 336 NLRB 1114, 1114 (2001). Again, this is intuitive under the law, because if a store has a fluctuating workforce, it is impossible to determine who should be and who should not be included in the petitioned-for unit. Here, interchange does not rise to the level of challenging the identity of the single-store unit. Every measure of interchange falls short, including the number of employees involved, the shifts worked by “borrowed” partners, and the hours worked by “borrowed” partners. The Company has not and cannot produce evidence of employee interchange substantial enough to rebut the single-facility presumption.

In *Red Lobster*, the Board clearly elucidated what is significant enough interchange to rebut the single-facility presumption:

³ This testimony is also undermined by conflicting testimony of worker Michelle Eisen, who said “if you don’t have vacation time accrued you can just choose to take unpaid time off.” Tr. 552: 12-13. Even after the recent changes, then, employees are still able to not work at another store if they choose not to and either take vacation time or unpaid time off.

Temporary transfers in this case consist of employees working some hours during the week in a store other than the one to which they are assigned. Even in the Dearborn Heights restaurant, where the degree of temporary interchange is most extensive, only 19 employees out of a work force of 85 employees were affected by a temporary work assignment during 1988, usually for very short periods of time. Permanent transfers, a less significant indication of actual interchange than temporary transfers, were similarly minimal, with 11 permanent transfer in a combined work force of 185 employees within a 1-year period. [...]

[I]t appears that only a small number of employees were involved in transfers. This distinguishes the case at hand from *White Castle System*, 264 NLRB 267 (1982), in which the Board dismissed the election petition. In that case 200 employees were involved in temporary transfers out of a total group of 350-400 employees.

Red Lobster, 300 NLRB at 911-912; see also, *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (“In any event, we would not view 13-14 instances of interchange among 23 employees over an 8-month period as demonstrating substantial interchange sufficient to overcome the single-facility presumption.”). Therefore, the Board held that temporary interchange of 19 of 85 (22.35%) employees in a given year is not significant enough to destroy homogeneity in a petitioned-for unit and overcome the single facility presumption.

The Company’s own data confirms that the number of “borrowed partners” at the petitioned-for store is insignificant. In Fiscal Year 2021, 20/58 (34.5%) partners at Store #5610 (Power & Baseline) worked a shift at another location. Er. Ex. 208. The issue with the Company’s raw interchange data is that their rates of interchange focus on the percentage of partners within the petitioned-for units that worked in other stores in the area. The Company even labeled the type of interchange as “inside-out.” Er. Ex. 208. When one examines the schedules at the petitioned-for store and the percentage of borrowed partners that worked there over the past two years, the data demonstrates that borrowed partners work an insignificant number of hours and shifts within the petitioned-for unit. Therefore, the interchange does not undermine the homogeneity of the unit – the store has a core group of workers that work side-by-side week after week.

On the other hand, the Company's data confirms the insignificant number of shifts and hours worked by "borrowed partners" at the Power & Baseline store. In FY 2021: at Store #5610 (Power & Baseline) only 92/6356 (1.4%) shifts and 477.83/34611.02 (1.4%) hours were worked by borrowed partners. Er. Ex. 208. This is not the type of employee interchange that is destructive of homogeneity or undermines the separate identity of stores to overcome the single-facility presumption. Nearly 99% of hours at the Power & Baseline store were worked by a core group of employees who work side-by-side week after week. *Id.* Section 7 of the NLRA grants those workers the right to collectively bargain with their employer over the terms and conditions of their employment if they so choose.

To aid in understanding and interpreting the Company's data on employee interchange, the Union has created Appendix G, attached hereto, which summarize key points regarding interchange, or lack thereof, in the previous two years. Appendix G was created by reviewing and analyzing the schedules for the Power & Baseline store. *See* Pet. Ex. 201. The Appendix lists the number of partners who worked and the number of borrowed partners (designated as "b" on the schedules) per week at the store. *See* Appendix G. The remaining columns show the consequent percentage of borrowed partners in that week, and finally the percentage of partners who were consistently working in the store – counted according to the number of partners who had worked a shift in the store in the preceding month. *See id.* The schedules at the petitioned-for store reveal how infrequent "borrowed shifts" are at Starbucks and at Power & Baseline in particular.

The store demonstrates extremely high retention rates during the period, with a core group of 20-25 employees working side-by-side week after week. *See* Pet. Ex. 201; Br. Appendix G. The schedules reveal that employee interchange at Starbucks is not the type to destroy homogeneity in the unit or undermine the separate identity of the stores. The Company would have one believe

based on “culture” or the fact that its workforce contains many young, part-time workers that these units are interchangeable, when the evidence clearly demonstrates they are not.

Worker testimony also supports the data that “borrowed” shifts rarely happen. Both Liz Alanna and Michelle Hejduk testified how little they work at other locations. T3 299-300; 343. The record clearly establishes that all interchange at Starbucks is completely voluntary and is coordinated and controlled by the workers themselves. In addition, the voluntary interchange that does occur is infrequent and insignificant under the law and does not question the appropriateness of single-facility units here. The Company fails to sustain its burden to overcome the presumption that single-facility units are appropriate under the law.

C. The Third-Party Report Submitted by Starbucks on Interchange and the Testimony Describing That Report Are Irrelevant, Cumulative, and Fundamentally Flawed in Their Analysis.

The Union renews its opposition to the inclusion of Abby Clay Turner’s testimony and Employer Exhibit 212 (hereinafter “CRA report”) in the record. The third-party analysis conducted by Dr. Turner’s firm is irrelevant to this hearing, because needlessly complex analysis of information already in the record is an attempt to supplant the NLRB’s role in interpreting the information. Furthermore, the evidence is cumulative, in that it is the same information already in the record in Employer Exhibit 208. The only difference is that the CRA report is *less* useful than Employer Exhibit 208, in that it is a more limited view of the data, framed in a way that is simply a restatement of Starbucks’ argument on interchange more broadly. Since this evidence is irrelevant and cumulative, it should be excluded from the record, or in the alternative, given no weight in the RD’s decision making. *See Dupont Specialty Products USA, LLC*, 369 NLRB No. 117, slip op. at 1 n. 1 (2020) (judge did not abuse discretion in refusing to permit expert testimony

regarding workplace safety, since it would have been largely cumulative) (citing *California Gas Transport*, 355 NLRB 465 n. 1 (2010)); *Cedars-Sinai Medical Center*, 31–CA–143038, unpub. Board order issued Dec. 1, 2015 (2015 WL 7769416) (expert testimony not relevant).

Regarding the substance of the CRA report and Dr. Turner’s testimony, it is worthless to the relevant analysis in this case, because it is premised on too many contrived and self-serving framing devices, all of which are stacked on top of each other. These framing devices do not follow the straightforward analysis demanded by the NLRB’s authority on interchange. Under the law, the appropriate question is whether interchange is so great in volume as to fundamentally alter, or even destroy, the identity of the workforce at the petitioned-for unit. *See Hilander Foods*, 348 NLRB 1200 (2006); *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001); *Haag Drug Co.*, 169 NLRB 877, 878 (1968). In other words, the correct analysis is whether employees in a store are able to identify themselves as part of a group of employees who belong to the store, or whether the amount of work being done by people from other stores is so large that the store ceases to have an identifiable workforce.

This is not the same analysis found in the CRA report. The most fundamental flaw in the report is that every time it purports to describe interchange at a particular store, it counts every employee who ever worked in the store within the time period the report uses (most often April 2019 to November 2021). T3 233; T2 202-03. *See* Er. Ex. 110. As Dr. Turner admitted on cross-examination, each time the report describes an individual store, it counts *every* employee who worked at the store during that time period of over two years, not only the employees who had that store as their home store during that period. T3 234. In other words, an employee who worked only one shift between April 2019 and December 2021 is given the same exact weight and

representation within the analysis as an employee who worked at that store for ten years. Using this concept, the report attempts to paint a picture of high levels of interchange.

The Employer's position on interchange, and the foundational premise of the CRA report, is that store identity is measured by the mere number of employees who have worked in the store, with absolutely no regard for how often they do so. This is wrong, and a specious way of presenting the data in Employer Exhibit 208. The appropriate analysis, rather, is to consider the total amount of work done in each store by employees from other stores. After all, the NLRB's analysis essentially asks whether interchange is regular and substantial enough to rebut the presumption that a single-store unit is appropriate. *See Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (holding interchange did not rebut the presumption in part because it was "neither regular nor substantial"); *see* Board Order Denying Employer's Request for Review. December 7, 2021, n. 1.

Even if the CRA report did not rest on this fundamentally incorrect premise, much of it would still be inherently meaningless under the relevant analysis. As the DDE in the first case pointed out, the interchange data the Employer presented is flawed in that it failed to take into account temporary transfers as opposed to permanent ones, failed to take into account what happens when a new store opens, failed to take into account the overwhelming change in operations Covid-19 necessitated, and failed to take into account extenuating circumstances such as store closures. DDE pp 19-20.

The CRA report is meant to appear as if it addresses each of these points, but it does not.⁴ Rather, it has sections of analysis that refer to each of those fundamental problems standing on

⁴ It should be noted that Dr. Turner did acknowledge the Covid-19 pandemic caused higher rates of interchange, as did vacation coverage during the holidays, and transfers during new store openings. T3 203-04 ("And you see some places where it's a little higher like January, February, looks a little higher, and we'll see later that that's -- that looks like that's when some new stores opened. a see a little bit higher in April and we'll see that that's COVID. And then you see a big spike toward the end of the graphic there. That's Christmas Day. So there's a lot of borrowing that happens Christmas Day.'). The Board previously undermined the significance of such interchange in the first DDE and the Denial of the Employer's RFR.

their own: a section that removes the data on the time in which Covid caused disruption; a section that removes data on store closings, and so on. However, each respective section treats the inherent problem alone, and leaves the remaining ones in place. *See* Er. Ex. 212. In other words, if the Employer and CRA truly wished to take into account the problems the DDE raised, the report would have engaged in an analysis of the data using all of these filters at once. The report makes no attempt to do this. In any event, each section of the report that goes through the motions of addressing the DDE's concerns is inherently flawed because it takes into account every employee who stepped foot in the store, as described above.

For all these reasons, the CRA report and Dr. Turner's testimony is not relevant to the proper analysis on interchange and should be excluded from the RD's analysis or given no weight.

III. THE STORES' GEOGRAPHICAL SEPARATION SUPPORTS FINDING SINGLE-STORE UNITS APPROPRIATE

The Mesa-area stores are not geographically proximate to one another for the appropriate unit analysis. The Board has held that distances as low as two miles apart are geographically distinct. *Cargill, Inc.*, 336 NLRB at 1114 ("The East and West facilities are geographically separate, located two miles apart"). For numerous locations in a city-wide area, the Board upheld a single-facility unit where there were 13 restaurants in the Detroit-area and the "average distance between restaurants is about 7 miles, and all are located within a radius of approximately 22 miles," leading the Board to conclude "[t]he separate Red Lobster restaurants in the Detroit area are not physically proximate to each other." *Red Lobster*, 300 NLRB at 908, 911; *see also Hilander Foods*, 348 NLRB at 1204 ("we find that the 8 to 13 mile distance between Roscoe and the other facilities does not favor a multilocation unit here"); *cf. Jerrys Chevrolet, Cadillac*, 344 NLRB 689, 690 (2005) (finding single-facility units inappropriate where "there are no fences or barriers that

separate the three contiguous facilities from one another. Customers can walk from one dealership to the next.”).

Here, the Company contends there are 14 stores that should be integrated into one Mesa market-wide unit, that are spread across an area with a 25-mile radius. T3 12. *See* Er. Ex 206. The stores are similarly distanced as the stores in Buffalo, New York, which the Board determined weighed in favor of single-store units there. *See* RFR, n. 1 (“we agree with the Acting Regional Director, for the reasons she stated, that the remaining factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange”). The stores are not geographically proximate to overcome the single-facility presumption in the appropriate unit analysis.

In addition, the Board construes close geographic proximity more as a prerequisite to show that a petitioned-for multilocation unit is appropriate, rather than to establish that a petitioned-for single-facility unit is inappropriate. *See Audio Visual Servs. Grp.*, 370 NLRB No. 39 (Oct. 26, 2020); *Capital Coors Co.*, 309 NLRB 322, 325 (1992). This is because when a union petitions for a multilocation unit, it needs to establish a community of interest amongst the workers at separate facilities, and showing close geographical proximity helps do that. *Id.* On the other hand, locations that are merely a few miles apart may appropriately bargain in separate units because:

The employees in a single retail outlet form a homogeneous, identifiable, and distinct group, physically separated from the employees in the other outlets of the chain; they generally perform related functions under immediate supervision apart from employees at other locations; and their work functions, though parallel to, are nonetheless separate from, the functions of employees in the other outlets, and thus their problems and grievances are peculiarly their own and not necessarily shared with employees in the other outlets.

Haag Drug Co., 169 NLRB at 877-878. Here, considerable distances separate the stores in Mesa, Arizona, which reinforces the individual autonomy of each store and the appropriateness of separate units at each location. The Company's evidence of geographic proximity cannot overcome the single-facility presumption.

IV. THE SIMILARITY OF JOB SKILLS AND PRODUCT INTEGRATION AT STARBUCKS DOES NOT UNDERMINE SINGLE-FACILITY UNITS, AND WORKING CONDITIONS DIFFER SIGNIFICANTLY AT THE INDIVIDUAL STORES

The Board considers the similarity of job skills, plant and product integration, and working conditions in the appropriate unit analysis. These factors are not as important in the retail industry, where uniform skills and product integration are common, and are considered more relevant to determine whether petitioned-for multilocation units are appropriate, rather than to overcome the single-facility presumption. *See Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 3–4 (2016); *Haag Drug Co.*, 169 NLRB at 877-878; *see also Hilander Foods*, 348 NLRB at 1203.

Here, the job skills of baristas and shift supervisors at Starbucks stores are similar, since they use and sell similar products, and all are under the same pay and benefits scheme. However, working conditions at the stores are not uniform, as Starbucks stores have different operating hours, and some stores are café-only while others operate both cafés and drive-thrus. Because the similar skills and products at the separate stores have little significance, and there are significant differences in the working conditions at the stores, the Company fails to rebut the single-facility presumption.

A. The Similarity of Job Skills at Starbucks Stores is Insignificant in the Appropriate Unit Analysis for Single-Facility Retail Units.

Since 1962, the Board has applied the single-facility presumption to retail stores. *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962) (“We have decided to [...] apply to retail chain

operations the same unit policy which we apply to multiplant enterprises in general”). The Board explained its change several years later:

Absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees' “fullest freedom” is maximized, we believe, by treating the employees in a single store or restaurant of a retail chain operation as normally constituting an appropriate unit for collective-bargaining purposes. The employees in a single retail outlet form a homogeneous, identifiable, and distinct group, physically separated from the employees in the other outlets of the chain; they generally perform related functions under immediate supervision apart from employees at other locations; and their work functions, though parallel to, are nonetheless separate from, the functions of employees in the other outlets, and thus their problems and grievances are peculiarly their own and not necessarily shared with employees in the other outlets.

Haag Drug Co., 169 NLRB at 877-878. Therefore, in the retail industry it is common for employees to perform similar jobs, but if they do so under separate supervision “their work functions, though parallel to, are nonetheless separate from, the functions of employees in other outlets.” *Id.* Here, there is no dispute that baristas and shift supervisors perform essentially the same functions at different stores. However, such functions are distinct because they are coordinated and supervised by the store manager at each location. The similarity in skills loses relevance with separate and distinct supervision at each of the locations, *see supra* Section I, and therefore the similarity in skills for baristas and shift supervisors across Starbucks stores does not carry any weight here. *See* Order, n. 1 (“we agree with the Acting Regional Director, for the reasons she stated, that the remaining factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange”).

B. Product and Plant Integration Are Only Relevant in Certain Niche Industries, Not the Retail Industry.

Since the 1960s when the global economy began to become more integrated and product and plant integration became more standard, the Board has recognized that such integration is not important to determine appropriate units:

[P]roduct integration is becoming a less significant factor in determining an appropriate unit because modern manufacturing techniques combined with the increased speed and ease of transport make it possible for plants located in different States to have a high degree of product integration and still maintain a separate identity for bargaining purposes.

Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964). That case was in the manufacturing industry, and no case has ever held that because certain stores use the same cups or plates that they cannot bargain as individual units. The Board recognizes that retail chain restaurants are built on a business model which requires uniform products throughout the chain. However, this does not undermine the appropriateness of single-facility units since the Board prioritizes the “fullest freedom” of employees to exercise their Section 7 rights. *See Haag Drug Co.*, 169 NLRB at 877-878. The Company cannot rebut the single-store presumption because each store uses uniform Starbucks products nationwide.

Plant integration is also only pertinent in a handful of niche industries. For example, the Board has held only system-wide units appropriate for a public utility company, *New England Telephone Co.*, 280 NLRB 162, 164 (1986), and fleetwide units appropriate in the maritime industry. *Inter-Ocean Steamship Co.*, 107 NLRB 330, 332 (1954); *but see Keystone Shipping Co.*, 327 NLRB 892, 895–896 (1999). Such industries are difficult to have single-facility units because of the high degree of interdependence. *See New England Tel. Co.*, 280 NLRB at 164 (“That judgment has plainly been impelled by the economic reality that the public utility industry is characterized by a high degree of interdependence of its various segments and that the public has

an immediate and direct interest in the maintenance of the essential services that this industry alone can adequately provide. The Board has therefore been reluctant to fragmentize a utility's operations.”). The Board has never had such concerns with interdependence for retail chain outlets. The Company fails to demonstrate how using the same products or occasionally borrowing cups from other stores overcomes the single-facility presumption in the appropriate unit analysis for a retail chain restaurant.

C. Starbucks Stores Have Different Store Hours and Materially Different Operations.

The Board considers working conditions at different stores to help determine the appropriate unit. *See Elmore, V.J., 5, 10 & \$1.00 Stores, Inc.*, 99 NLRB 1505, 1505 (1952). Working conditions include hours, pay, benefits, and the nature of the employer’s operations. *Id.*; *see also Red Lobster*, 300 NLRB at 908. Similar working conditions are usually considered to determine whether there is a community of interest in a petitioned-for multilocation unit. *See Audio Visual Servs. Grp.*, 370 NLRB No. 39 (2020). Even when conditions of employment are centrally administered and uniform at different locations, the Board has upheld the single-facility presumption. *Red Lobster*, 300 NLRB at 908 (finding single-facility units appropriate even where “[p]olicies regarding wages, hours, overtime, vacations, holidays, retirement, profit sharing and employee fringe benefits are centrally established and uniformly applied at all the Red Lobster restaurants.”).

Here, differences in store hours and the fact that some stores are café only while others have drive-thrus militate in favor of the single-facility presumption. While pay and benefit policies are uniform, the Company clearly changes its operations of different stores to suit the needs of the local community, supporting the single-facility presumption here.

Differences in store hours at Starbucks in the Mesa-area support single-store units. In *Elmore, V.J., 5, 10 & \$1.00 Stores, Inc.*, the Board found single-store units appropriate “although wages are generally uniform throughout the district, hours of work vary from one store to another, as they depend upon custom in the local community.” 99 NLRB at 1505. It is undisputed that Starbucks store hours are different depending on the needs of the local community. *See* Er. Ex. 202; T1 100: 5-22 (“If there are more customers that are showing up early, or if there are less customers showing up late, we provide them a deep analysis of, you know, where their stores are actually performing, and provide a recommendation”). The Company seems to focus on who sets the store hours, but this misses the point. *See* T1 100: 5-22. The difference in store hours is not an aspect of managerial control; rather, it is a difference in employee shifts and the terms and conditions of employment. If a store closes at 7:00 p.m. instead of 9:00 p.m., workers at that particular store have substantially different conditions of employment than workers at the other store.

Differences in operations at the Starbucks stores also favor single-store units. *See Hot Shoppes, Inc.*, 130 NLRB 138, 141 (1961) (finding operations “functionally distinct” where some workers catered at airport and others served in normal restaurants). Of the fourteen stores included in the Company’s proposed unit, one is café only and thirteen are café and drive-thru. *See* Er. Ex. 202. Not only does this change the layout of the stores, it also changes the staffing needs, work stations, and training that each worker must go through. *See* Er. Ex. 5; Er. Ex. 16; Er. Ex. 14. This also must change other conditions of employment. For instance, workers stationed at the drive-thru window need to wear a head set while other workers do not. Also, drive-thru times established by the company are a contentious topic. Such a condition of employment is important to workers at stores with a drive-thru and irrelevant to workers at a café-only store.

The similarity of job skills and the degree of product integration at Starbucks carry little weight in the single-store unit analysis, while the difference in working conditions and store operations at separate locations favor single-store units. The Company fails to show how any of these factors would prohibit the Board from upholding the single-store presumption here.

V. THE ABSENCE OF A BARGAINING HISTORY BETWEEN THE PARTIES AND THE EXTENT OF ORGANIZATION FAVOR A SINGLE-STORE UNIT.

Both the fact that there is no bargaining history between the parties, and the Union's organizing efforts on a store-by-store basis favor a single-store unit.

A. There Is No Bargaining History.

There is no bargaining history between Starbucks and Workers United. Bargaining history is an important factor in the Board's analysis, and when there is no bargaining history it supports upholding the single-store presumption. *See Sav-On Drugs, Inc.*, 138 NLRB at 1034–35; *Lipman's, A Div. of Dayton-Hudson Corp.*, 227 NLRB at 1438; *Renzetti's Mkt., Inc.*, 238 NLRB at 176; *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984); *Hilander Foods*, 348 NLRB at 1202-03. Only when there is a history of multilocation bargaining does it favor overturning the single-store presumption. *Spartan Department Stores*, 140 NLRB 608, 610 (1963) (regionwide); *Meijer Supermarkets, Inc.*, 142 NLRB 513, 514 (1963) (chain wide). Here, the parties stipulated that there is no bargaining history. Bd. Ex. 2. Therefore, the fact that there is no bargaining history between the parties supports the appropriateness of single-store units.

B. Workers United Has Organized Individual Units Store-By-Store.

Workers United has only organized individual Starbucks locations across the country, including the Power & Baseline store in Mesa, Arizona. While not controlling, the Union's

organizing efforts may be a persuasive factor in the appropriate unit analysis. *See NLRB v. Metropolitan Life Ins. Co.*, 380 U.S. 438 (1965); *Dixie Bell Mills, Inc.*, 139 NLRB 629 (1962). The relevant question is not *where* the Union is organizing, but *what* units it seeks to represent. *See Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962) (finding “the fact that no labor organization seeks to represent a multiplant unit” supports upholding the single-store presumption). Here, Workers United has only focused on organizing individual stores in the Mesa-area and beyond, and therefore its extent of organization supports the single-store presumption.

VI. STARBUCKS’ SELF-SERVING CHANGES IN RESPONSE TO THE UNION CAMPAIGN ARE IRRELEVANT TO DETERMINE THE APPROPRIATE UNIT.

Justice requires that Starbucks not be allowed to flout Board law and the agency’s legitimacy by attempting to win its case using its illegal conduct. “[W]hen evaluating the community of interest factors, the Board ignores any impermissible changes made unilaterally by the employer” since “[t]o hold otherwise would allow [the employer] to benefit from its own unlawful conduct.” *Dodge of Naperville, Inc. v. N.L.R.B.*, 796 F.3d 31, 39 (D.C. Cir. 2015) (*citing In re Comar, Inc.*, 339 N.L.R.B. 903, 911 (2003)). This is exactly what Starbucks attempts to do in this case. The Company has introduced massive changes in response to the union campaign, likely designed both as part of its stunning anti-union campaign and in order to create facts more favorable to it in this and future RC cases. If the Company attempts to rely on those changes is making its case before Region 28, that effort must be rejected absolutely.

For instance, Andrea Streedain, Starbucks Regional Vice President of the Western Mountain Region, which covers 12 states, T3 26, mentioned how she was aware that District Managers were involved in finding coverage for hourly partners in Mesa, Arizona because “I’ve been involved in those conversations for -- for these last few weeks.” T3 100. She also could not

point to any instances before “the last few weeks” of District Managers having any role in finding coverage for hourly partners. T3 101. Ms. Streedain’s testimony not only demonstrates that a regional-level manager in charge of 12 states has placed particular emphasis on operations in Mesa, Arizona since the union campaign went public, but also the changes the Company has made in response to the campaign.

Any attempt to rely on these facts must fail not only because it would represent a severely unjust perversion of the NLRB’s role and structure, but in order to make clear to other employers that federal labor law has meaningful consequences.

VII. DETAILS OF THE ELECTIONS

As the Union expressed at the hearing, it takes the position that the election should be held by mail ballot. This request is based first on the unavailability of the store as an election site (which is apparently undisputed). Second, there is a potential for confusion regarding a physical election site outside of the store, since it would be a location unfamiliar to voters. Third, carrying out such an election would put undue strain on the NLRB, which would have to find an alternative location. Finally, the ongoing dangers presented by the Covid-19 pandemic, as described in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), have not subsided, and are in fact increasing in severity, including in the area surrounding the Power & Baseline store.

In addition, for the reasons stated in the DDE in the first case, the employees have a “scattered” work schedule that further justifies mail-ballot elections. *See* DDE 23-26.

CONCLUSION

For these reasons, Workers United respectfully requests that the Regional Director issue a Decision and Direction of Election ordering a mail-ballot election for Starbucks Store #5610 at Power & Baseline in Mesa, Arizona, to be held as soon as practicable.

Dated: December 21, 2021
Buffalo, NY

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APPENDIX G

Week	Total Partners	Borrowed Partners	% (Borrowed/Total)	% of Partners the Same (worked a shift in last month)
12.2.19	15	0	0%	N/A
12.9.19	15	0	0%	15/15 = 100%
12.16.19	15	0	0%	15/15 = 100%
12.23.19	14	0	0%	14/14 = 100%
12.30.19	17	0	0%	15/17 = 88%
1.6.20	17	0	0%	17/17 = 100%
1.13.20	15	0	0%	15/15 = 100%
1.20.20	15	0	0%	15/15 = 100%
1.27.20	15	0	0.00%	15/15 = 100%
2.3.20	15	0	0%	15/15 = 100%
2.10.20	14	0	0%	14/14 = 100%
2.17.20	14	0	0%	14/14 = 100%
2.24.20	15	0	0%	15/15 = 100%
3.2.20	15	0	0%	15/15 = 100%
3.9.20	14	0	0%	14/14 = 100%
3.16.20	15	0	0%	15/15 = 100%
3.23.20	16	0	0%	15/16 = 93.75%
3.30.20	15	0	0%	15/15 = 100%
4.6.20	16	0	0%	16/16 = 100%
4.13.20	14	0	0%	14/14 = 100%
4.20.20	12	0	0%	12/12 = 100%
4.27.20	13	0	0%	13/13 = 100%
5.4.20	15	0	0%	15/15 = 100%
5.11.20	16	0	0%	16/16 = 100%
5.18.20	16	0	0%	16/16 = 100%
5.25.20	16	0	0%	16/16 = 100%
6.1.20	16	0	0%	16/16 = 100%
6.8.20	16	0	0%	16/16 = 100%
6.15.20	15	0	0%	15/15 = 100%
6.22.20	15	0	0%	15/15 = 100%
6.29.20	15	0	0%	15/15 = 100%
7.6.20	15	0	0%	15/15 = 100%
7.13.20	16	0	0%	16/16 = 100%
7.20.20	16	0	0%	16/16 = 100%
7.27.20	16	0	0%	16/16 = 100%
8.3.20	17	0	0%	16/17 = 94%
8.10.20	16	0	0%	16/16 = 100%
8.17.20	16	0	0%	16/16 = 100%
8.24.20	17	0	0%	17/17 = 100%
8.31.20	17	0	0%	16/17 = 94%
9.7.20	18	0	0%	17/18 = 94.4%
9.14.20	17	0	0%	17/17 = 100%
9.21.20	18	0	0%	16/18 = 88.9%
9.28.20	18	0	0.00%	18/18 = 100%
10.5.20	20	0	0.00%	18/20 = 90%
10.12.20	21	0	0%	21/21 = 100%
10.19.20	21	0	0.00%	21/21 = 100%
10.26.20	22	0	0.00%	21/22 = 95.4%
11.2.20	21	0	0.00%	21/21 = 100%
11.9.20	23	0	0.00%	21/23 = 91.3%
11.16.20	23	0	0.00%	23/23 = 100%
11.23.20	23	0	0%	23/23 = 100%
11.30.20	23	0	0%	23/23 = 100%
12.7.20	24	0	0%	23/24 = 95.8%

12.14.20	24	0	0% 24/24 = 100%
12.21.20	24	0	0.00% 24/24 = 100%
12.28.20	24	0	0% 24/24 = 100%
1.4.21	24	0	0% 24/24 = 100%
1.11.21	24	0	0% 24/24 = 100%
1.18.21	23	0	0% 23/23 = 100%
1.25.21	24	0	0% 24/24 = 100%
2.1.21	25	0	0% 24/25 = 96%
2.8.21	25	0	0% 24/25 = 96%
2.15.21	25	0	0% 25/25 = 100%
2.22.21	27	0	0% 25/27 = 92.6%
3.1.21	28	0	0% 27/28 = 96.4%
3.8.21	28	0	0.00% 28/28 = 100%
3.15.21	28	0	0.00% 28/28 = 100%
3.22.21	28	0	0% 28/28 = 100%
3.29.21	28	0	0% 27/28 = 96.4%%
4.5.21	28	0	0% 28/28 = 100%
4.12.21	27	0	0% 27/27 = 100%
4.19.21	28	0	0% 28/28 = 100%
4.26.21	25	0	0% 25/25 = 100%
5.3.21	25	0	0% 25/25 = 100%
5.10.21	25	0	0% 25/25 = 100%
5.17.21	24	0	0% 24/24 = 100%
5.24.17	25	0	0% 25/25 = 100%
5.31.21	23	0	0% 23/23 = 100%
6.7.21	23	0	0% 23/23 = 100%
6.14.21	23	0	0% 23/23 = 100%
6.21.21	23	0	0% 23/23 = 100%
6.28.21	23	0	0% 23/23 = 100%
7.5.21	25	0	0% 23/25 = 92%
7.12.21	26	0	0% 25/26 = 96%
7.19.21	27	0	0% 26/27 = 96.3%
7.26.21	26	0	0% 26/26 = 100%
8.2.21	26	0	0% 26/26 = 100%
8.9.21	25	0	0% 25/25 = 100%
8.16.21	26	0	0% 25/26 = 96%
8.23.21	24	0	0.00% 24/24 = 100%
8.30.21	25	0	0% 25/25 = 100%
9.6.21	26	0	0% 26/26 = 100%
9.13.21	26	0	0% 26/26 = 100%
9.20.21	25	0	0% 25/25 = 100%
9.27.21	26	0	0% 26/26 = 100%
10.4.21	27	0	0% 26/27 = 96.3%
10.11.21	27	0	0% 27/27 = 100%
10.18.21	25	0	0% 25/25 = 100%
10.25.21	26	0	0% 26/26 = 100%
11.1.21	25	0	0% 25/25 = 100%
11.8.21	26	0	0% 26/26 = 100%
11.15.21	28	0	0% 26/28 = 92.85%
11.22.21	29	0	0% 28/29 = 96.5%